

APPENDIX 1: 2013 SB 141
SB 141-FN – AS AMENDED BY THE SENATE

AN ACT establishing the Granite State farm to plate program.
SPONSORS: Sen. Fuller Clark, Dist 21; Sen. Watters, Dist 4; Rep. Sad, Ches 1; Rep. Spang, Straf 6; Rep. Kaen, Straf 5; Rep. Bixby, Straf 17

AMENDED ANALYSIS

This bill establishes the Granite State farm to plate food policy and principles.

AN ACT establishing the Granite State farm to plate program.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Section; The Granite State Farm to Plate Food Policy and Principles. Amend RSA 425 by inserting after section 2 the following new section:

425:2-a The Granite State Farm to Plate Food Policy and Principles.

I. It is the policy of the state of New Hampshire through the department of agriculture, markets, and food and in conjunction with other state agencies to encourage and support local food producers, farming, and fisheries including businesses engaged in agriculture, the raising and care of livestock, dairy, fishing, foraging, and aquaculture, agritourism, and the associated local and regional businesses that process, purchase, distribute, and sell such food throughout the state.

II. State agencies, including the department of agriculture, markets, and food; the department of resources and economic development; the department of health and human services; the department of environmental services, the department of transportation, and the department of education shall strive for inter-agency cooperation as well as cooperation with public and private entities to foster local, state, and regional food systems that adhere to the Granite State farm to plate principles below:

(a) Agriculture in New Hampshire represents a vital part of both the state's rural and urban economies and the larger food systems that connect it with the state's local and regional economies and the public.

(b) Consumer demand from individuals and institutions, including New Hampshire public schools, universities, child care facilities, after-school programs, restaurants, hospitals, and prisons, for locally grown and produced food is growing and deserves support from the state and state agencies.

(c) Support of local food economies is vital to public health of our residents and to the viability and livability of our communities.

(d) Increased access to healthy food occurs when local and regional community-based food production, processing, aggregation, distribution, marketing, and retail work together to build markets for healthy food.

(e) New Hampshire citizens and communities face social and environmental health issues connected to food, hunger, malnutrition, incidences of obesity, heart disease, type 2 diabetes, and other chronic diseases. Increased access to local, healthy food is needed to address such multifaceted issues.

(f) Local and regional food economies are a vital source of employment in our communities. Promoting the growth of such local food economies will enhance economic development and job growth throughout the state.

(g) Economic development opportunities among New Hampshire's cities and towns are facilitated by harmonizing local and state law and removing obstacles and excessive financial burdens to farms and associated businesses, including farmers' markets, cooperatives, food hubs, fisheries, and processing centers.

(h) When faced with the loss of productive farmland through government action, all levels of government shall consider the findings of the Farm Viability Task Force of 2006-2007 as well as consider advocating farmland preservation efforts that would permanently protect farmland with agricultural conservation easements that place priority on protection of agricultural resources and production to ensure our state's future capacity to produce food.

(i) The New Hampshire dairy industry is vital to the state's economy. It impacts state and local economies via millions of dollars in total economic output, thousands of jobs and millions more dollars in labor income. The dairy industry should be further supported through the Milk Producers Emergency Relief Fund as specified in RSA 184:107, and other methods that will encourage the success of the state's dairy industry.

(j) Federal governmental programs provide significant opportunities for the state to obtain federal funding that supports the development of local food systems, such as use of federal benefits at farmers' markets. Seeking such funding should be of the highest priority at all levels of government.

k) Recognizing that a broad array of entities and organizations are already working together to promote New Hampshire local and regional food systems and participants, including agricultural producers, processors, distributors, and consumers, the input of such groups is vital to the construction of a more diverse and productive set of New Hampshire food systems.

III. To the extent possible, local governments shall consider the policy and principles of this section when adopting local law, or when enforcing existing law and regulation.

2 Effective Date. This act shall take effect upon its passage.

SB 141-FN FISCAL NOTE

FISCAL IMPACT: The Department of Agriculture, Markets and Food states this bill, as amended by the Senate (Amendment #2014-0051s), will have no fiscal impact on state, county, and local expenditures or revenue.

METHODOLOGY: The Department of Agriculture, Markets and Food states this bill establishes the granite state farm to plate food policy and principles. The Department states this bill will have no fiscal impact on state, county, and local expenditures and revenue.

APPENDIX 2: "Front Yard" Garden Provisions



An Orlando, FL, homeowner ordered to remove a front yard garden objected, gaining some national attention. Eventually, the city considered and adopted an ordinance to allow the garden to remain.

In general terms, the revised code provisions allow sixty percent of the front yard to be used as a garden, list approved trees and plants, require

gardeners to remove dead and overgrown plants, and set a five-foot height requirement for structures, such as tomato cages.

Sacramento, CA, formerly required front yard landscaping to have the non-parking and drive way portion of the setback areas “landscaped, irrigated and maintained with primarily low ground cover or turf. Only living vegetation may be used as ground cover.” In 2007, the requirements were changed so that “. . . the remaining unpaved portion of the setback areas shall be landscaped, irrigated and maintained. The landscape may include grass, annuals, perennials, ground cover, shrubs, trees, and any design elements such as planters, rocks, mulch, or similar elements when integrated as part of the landscape. However, only living vegetation may be used as a primary ground cover; no cement, brick, artificial turf, or other non-vegetative products such as plastic plants or flowers may be used for this purpose. All landscaping materials shall be mowed, trimmed, and/or maintained as often as necessary to prevent overgrowth and blight.”

Another episode in the so-called garden wars¹ arose in Miami Shores, FL, in light of requirements in its landscaping article² in the zoning code to the effect that:

- Green space must be planted with grass, sod or living ground cover and a minimum of two trees;
- **Vegetable gardens are permitted in rear yards only.**

APPENDIX 3: Sample “Back Yard” Chicken Language

Beloit, Wisconsin, Code of Ordinances

7.244 CHICKENS. (Cr. #3468)

(1) DEFINITIONS. The following terms, when used in this section, shall have the meaning set forth below:

- (a) Chicken means a domestic chicken of the subspecies *Gallus gallus domesticus*.
- (b) Keep means either the owning, keeping, possessing or harboring of a chicken.
- (c) Rooster means a male chicken of any age, including a capon or otherwise neutered male chicken.
- (d) Coop means a new or existing enclosed accessory structure designed or modified for the keeping of chickens and meeting the requirements of this section.
- (e) Chicken Run means a fenced cage attached to a coop and not to exceed 40 square feet in area or one percent of the rear yard area, whichever is greater. However, in no instance, may the chicken run exceed 100 square feet in area.
- (f) Rear Yard Area means that area extending across the full width of a lot between the rear property line and the rear line of the residence, excluding the corner side yard if there is one.

(2) CHICKENS ALLOWED.

- (a) Any person may keep up to 4 female chickens on any residential zoning lot in the City which contains one single-family residential dwelling unit. No person shall otherwise keep any chicken within the City of Beloit other than as permitted in a "Development Holding" zoning district as provided in [§7.243\(3\)](#) and §5-204 of the City of Beloit Zoning Code.
- (b) No roosters shall be allowed to be kept under this section.
- (c) Chickens may only be kept in a coop or chicken run located in the rear yard area as defined in this section. The chicken run and coop shall not be located in the front, interior side or corner side yard of the residential zoning lot.

¹ Homeowner’s arguments against the provisions are described at: <http://foodfreedomgroup.com/2013/11/20/miami-shores-couple-files-suit-over-ban-on-front-yard-veggie-gardens/>, which includes a video cartoon summarizing the situation (http://www.youtube.com/watch?v=avHrPbONTzE&feature=player_embedded). Note that the following comments and the reference to the property rights advocacy group, the Institute for Justice: “Hermine and Tom are part of a nationwide movement of small-scale food producers and consumers who are tired of the government dictating what foods they can grow, sell, and eat. On November 19, 2013, they joined with the Institute for Justice to challenge Miami Shores’ senseless front-yard vegetable garden ban. Their case aims to vindicate the right of all Americans to peacefully use their own property to support their own families.”

² <http://library.municode.com/index.aspx?clientId=11252>, last viewed January 26, 2014.

(3) **SLAUGHTERING OF CHICKENS.** No person shall slaughter any chicken within the City of Beloit other than at a licensed meat processing facility.

(4) **CONSTRUCTION AND MAINTENANCE OF COOP.**

(a) A coop shall be constructed from conventional building materials in a workmanlike fashion or be a premanufactured enclosed structure designed specifically for the keeping of urban chickens. Such coop must be secure and impermeable to rodents, wild birds and predators, including dogs and cats and must be constructed or modified in a fashion to provide a humane environment for the chickens, including adequate ventilation, adequate sun, adequate shade and adequate protection from adverse weather. A newly built or installed coop cannot exceed 24 square feet in size.

(b) A coop may have a chicken run attached and contiguous to the coop with the run constructed in a fashion to confine the chickens and in compliance with the provisions of this section.

(c) Coops and chicken runs must be kept clean, dry, and odor free and kept in a sanitary condition at all times in such a manner as to not disturb the use or enjoyment of adjoining property due to noise, odor or any other adverse impact.

(5) **CONFINEMENT OF CHICKENS.** Chickens must be kept in a coop or a chicken run at all times. Between sunrise and sunset, chickens may be allowed outside of the coop in the chicken run. Chickens must be secured within the coop between sunset and sunrise.

(6) **LOCATION OF COOP AND RUN.** A coop must be located no closer than 10 feet to the rear wall of the residential dwelling unit located on the zoning lot and no portion of the coop or chicken run shall be located within 10 feet of any lot line of the zoning lot upon which the coop and chicken run are located, unless the rear or side lot is contiguous to an alley in which case the coop or run shall not be located within 3 feet of the lot line. No portion of the coop or chicken run shall be located within 20 feet of any principal structure located upon any adjacent property.

(7) **ANNUAL RESIDENTIAL CHICKEN PERMIT REQUIRED.** No person shall keep any chickens nor construct any coop or chicken run without first obtaining an annual residential chicken permit hereunder.

(a) *Fee.* An application fee, established by City Council resolution, shall be paid to the City by the applicant when the application is filed.

(b) *Application.* The application for the annual residential chicken permit shall be made using such forms required by the City's Director of Planning and Building Services and must contain an accurately scaled drawing showing the location of the proposed coop and any chicken run, distances to lot lines and distances to the nearest adjoining principal structure, together with dimensions of the coop and chicken run. Chicken runs shall be exempt from [§8-300](#) of the City of Beloit Zoning Code related to fencing regulations. However, all chicken runs constructed shall be of wire normally used for the containment of chickens. If the applicant is not the owner of the parcel, the property owner must sign the application certifying approval for the use of the premises for this purpose. The property owner's signature must be notarized.

(c) *Registration.* Any permit application shall be accompanied with satisfactory evidence that the applicant has registered the proposed location with the Wisconsin Department of Agricultural Trade and Consumer Protection pursuant to §95.51, Wis. Stats. and ATCP 17, Wis. Adm. Code.

(d) *Limited Permits.* The permit year shall be January 1 through December 31. In the first permit year, no more than 30 permits shall be issued. Permit applications for the first permit year will not be accepted until 8:00 a.m. on January 2, 2013, and will be processed on a first come, first served basis.

(8) **MISCELLANEOUS.**

(a) All food supplies maintained for the coop must be kept in a secure and rodent-proof container.

(b) Should any person feed chickens kept under this section with food meant for human consumption or scraps of such food, it shall only be fed within the coop and shall be prohibited within the chicken run.

(c) All waste generated by the operation of the coop and chicken run, including, but not limited to, chicken carcasses, manure, droppings and spoiled feed, shall be disposed of pursuant to the provisions of [Chapter 17](#) of this Municipal Code. (Note: [Chapter 17](#) will need to be amended related to the on-site storage and preparation of carcasses for disposal.)

(d) A building official may enter the rear yard of a residential zoning lot at any reasonable time to determine if a property is in compliance with the provisions of this section.

(9) PENALTY.

(a) The penalty for any violation of this section shall be as provided in [§25.04](#) of this Municipal Code.

(b) Any person convicted of any violation hereunder on more than 2 occasions relating to incidents occurring within a 365-day time period shall be ineligible to receive a renewal permit for a period of one year after the date of the last such conviction. In addition, no other person may apply for a permit hereunder on the zoning lot subject to such prior permit during said period of renewal ineligibility.

APPENDIX 4: Sample Pot Bellied Pig Language

Riverside, California

<http://www.riversideca.gov/municode/pdf/08/8-19.pdf>

Chapter 8.19 POT-BELLIED PIGS

Section 8.19.010 Purpose. Miniature pot-bellied pigs are increasing in popularity as domesticated pets and the keeping of not more than two such animals on any single family residentially zoned property, excluding the RA-5 and RC zones, is permitted in the City. However, as such animals are still livestock notwithstanding size, the keeping of such animal needs to be closely regulated and controlled to insure that such animal does not become a nuisance or danger to the general public and the neighborhood in which it is kept. The City Council finds that the keeping of pot-bellied pigs so as not to create a nuisance can be reasonably accommodated by licensing and other restrictions.

Section 8.19.020 Definition. For the purposes of this chapter, the words "pot-bellied pig" shall mean a domesticated miniature Vietnamese, Chinese or Asian pot-bellied or pot-belly pig not exceeding one hundred twenty-five pounds in weight and eighteen inches in height measured at the shoulder.

Section 8.19.030 Administration and enforcement. The provisions of this Chapter shall be administered and enforced by the City's duly appointed and acting Animal Control Director as defined by this Title and the deputies of such Animal Control Director. In addition, the provisions of this Chapter may be enforced by any code compliance officer of the City.

Section 8.19.040 License, compliance with regulations. Notwithstanding the provisions of Title 19 of this code, it is unlawful for any person to own or have custody, control or possession of any pot-bellied pig within the City unless such pig is licensed pursuant to the provisions of this Chapter within ten calendar days upon said pig's entry to the City and unless said pig complies with the regulations as set forth in this Chapter.

Section 8.19.050 Licensing procedures. Any person owning or having custody or control of a pot-bellied pig within the City may obtain a license for such pig from the Animal Control Director in accordance with the following procedures:

A. Application. File with the Animal Control Director an application on a form provided by the City which shall contain the following information:

1. The name and address of the applicant and the address of the property upon which the pot-bellied pig is to be kept;

2. The name, age and weight of the pot-bellied pig including any identifying marks or tattoos;

3. Such other information as the Animal Control Director deems appropriate.

B. License Fee. The application shall be accompanied by a nonrefundable license fee in an amount as may be established by resolution of the City Council.

C. Veterinary Certification. The application shall be accompanied by a statement signed by a licensed veterinarian certifying that the pot-bellied pig has been spayed/neutered, that the pig is in good health and has received all necessary vaccinations, and the height and weight of the pig. Such certification shall be no older than thirty calendar days when submitted to the Animal Control Director.

Section 8.19.060 Issuance, term, renewals.

A. Issuance of License. The Animal Control Director shall issue a license for the keeping of a pot-bellied pig on a lot within the City zoned for such use upon the filing of a completed application and a finding that the animal meets the requirements set forth in subsections A through D of Section 8.19.070.

B. Term of License. Any license issued pursuant to this chapter shall be valid for a period of one year from the date of issuance; provided, however, any license expiring on a Saturday, Sunday or holiday, shall be valid until the next work day.

C. Renewals. Any license issued pursuant to this chapter may be renewed for periods of one year each upon the filing of an application for such renewal with the Animal Control Director accompanied by a nonrefundable renewal fee in an amount as may be established by resolution of the City Council. The renewal application shall be on such form as provided by City. The Animal Control Director shall issue such renewed license unless it is found that the pot-bellied pig is not in compliance with the regulations as set forth in Section 8.19.070.

Section 8.19.070 Regulations. The owner or person having custody, control or possession of a pot-bellied pig within the City shall comply with the following regulations:

A. Spayed/Neutered. The pot-bellied pig shall be spayed or neutered.

B. Weight. The pot-bellied pig shall not weigh more than one hundred twenty-five pounds.

C. Height. The pot-bellied pig shall not exceed eighteen inches in height as measured from the shoulder of said animal.

D. De-tusked. Any male pot-bellied pig two years of age or older must have his tusks removed.

E. Confinement on Premises. Each pot-bellied pig shall be provided with a fenced yard designed to assure that the animal is confined and managed in a safe, clean and odor-free manner when out-of-doors. Notwithstanding any other provision of this code, the pot-bellied pig may be kept as a pet in the residence on the lot upon which said pig resides.

F. Leash Requirements. Each pot-bellied pig while on a street, sidewalk or other public place shall be restrained by a harness and leash or similar restraint not longer than six feet in length held by a competent person.

Section 8.19.080 Revocation of license. The license for a pot-bellied pig issued pursuant to this chapter may be revoked by the Animal Control Director upon the finding that the provisions of Subsections A through D of Section 8.19.070 have been violated and not corrected within ten calendar days of issuance by the Animal Control Director or a deputy of the Animal Control Director of a notice of such alleged violation or within such longer period as may be specified in the notice of violation. Upon failing to correct the violation within the required time, the Animal Control Director shall issue a written notice of the revocation of the license and the pot-bellied pig must be removed from the City within ten calendar days thereafter or such longer period as may be set forth in the notice of revocation.

APPENDIX 5: Excerpts from Selected Documents in Dunbarton, NH, Chicken Farm Site Plan Review

1. *Dunbarton Planning Board Draft Minutes- Wednesday, November 20, 2013*

[Note the November 20 meeting minutes include 9 attachments, including a review by the Central NH Regional Planning Commission. The attachments in pdf format may be viewed by clicking on the attachment links on the Planning Board minutes available at: <http://dunbartonnh.org/index.php/j-stuff/planning>.]

CONTINUED PUBLIC HEARING FOR SITE PLAN REVIEW - TOM GIOVAGNOLI (D6-04-02) PROPOSED SITE PLAN REVIEW TO CONSTRUCT A 46' X 588' BUILDING TO HOUSE 20,000 LAYING HENS LOCATED AT 57 TWIST HILL ROAD IN THE LOW DENSITY DISTRICT IN DUNBARTON, NH

...

Ken Swayze, Chairman, stated he was not going to call the abutters in any order and any abutters who have not spoken yet will be allowed to speak first. Abutters will not be allowed to state the same things as previously all over again. We will be addressing more technical information as required for a Site Plan Review for an Agricultural Use. Do not want to delve into the past character and violations of Mr. Giovagnoli. If you have any concerns, you may take it up with the Selectmen, DES, EPA if it goes that far. We need to focus on the technical aspects of this building. We are mostly in the information stage. If things go well on the applicant's part and they can get together a plan that serves our needs, they may be able to secure a decision at the next meeting. We are not going to do any decision making this evening.

Kelly Dearborn-Luce presented a Status Report for the Giovagnoli Project. (Attachment #2) Stated the Board has received a newly updated plan on November 1.

*Ken Swayze, Chairman, stated the applicant has offered to fund two studies, one from Central New Hampshire Regional Planning and the other from Northpoint Engineering. (Attachment #3 and #4)
Both these are available to the public. We will not be going into the content of these studies this evening.
At this point, Ken Swayze, Chairman, turned the meeting over to the applicant and his representatives, Jennifer McCourt, Engineer, and John Cronin, Attorney.
Attorney Cronin noted that he felt the Planning Board should act on their request for the Waivers as referenced on the Status Report as follows:*

Waiver (1):

(1) Surveyed property lines, utilizing the NH State Plane Coordinate System, showing their bearings and distances and showing monument locations every 1,000 feet.

Discussion:

Jennifer McCourt, Engineer, stated the reasoning for this waiver is that the project is being developed within the center of the property and not anywhere near the property line. It would not add any substance to the project to complete the survey and put all the monuments in. It is economically and physically not feasible.

Ken Swayze asked that she would detail all the features proximate to the proposed building area according to contemporary standards. She agreed.

MOTION:

George Holt made a motion that the Dunbarton Planning Board grant the request for the first waiver as requested by the applicant as follows: (1) Surveyed property lines, utilizing the NH State Plane Coordinate System, showing their bearings and distances and showing monument locations every 1,000 feet. Mike Guiney seconded the motion.

Board Discussion: Charles Frost stated he has a problem with this. If we have it in our regulations, why are we waiving it? The second reason is that the chickens are going to be outside. According to the Ordinance, they cannot be closer than 100 feet from the boundary. How can you control your livestock if you don't know where your boundaries are?

Jennifer McCourt explained that the 100 foot setback was for the building which houses the livestock, not the livestock themselves.

It was explained that if a person wanted to build just a building and owned 200 acres, we would not require him to survey the entire 200 acres.

The motion passed unanimously.

Waiver (2)

(2) 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.

Discussion:

Jennifer McCourt, Engineer, stated that they were requesting this Waiver for the same reasons as the first because it is a very large property and are developing in the center. There is nothing different. It would be a huge burden to do a survey with an error closure of 1 in 10,000.

Ken Swayze asked her to be sure to supply all necessary details proximate to the proposed building area. She agreed.

MOTION:

George Holt made a motion that the Dunbarton Planning Board grant the request for Waiver (2) as requested by the applicant as follows:

2. 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.

Les Hammond seconded the motion. The motion passed unanimously.

Waiver (3):

(20) Features such as existing water courses, water bodies, trees, landscaping, existing foliage lines, other vegetation, rock ledges, stonewall, and any other human made or natural features, in accordance with Section VII. A. Design of the Development.

Discussion:

Jennifer McCourt, Engineer, stated this is not in the area of the development. There are no water courses. We show all the features. We have provided aerial photography.

Ken Swayze asked if they were willing to put all the details on the plan in accordance with the Site Plan Review and proximate to the proposed building area.

George Holt stated that if you had an extension of mapping up to 100'. We want to know what is the 200' corridor around the margin of the existing boundaries. Don't see much on the back side along the barn. Would like to see 100' edge around the proposed impact area mapped out.

Jennifer McCourt stated that she would question the 100' along the roadway. Would prefer 50'. There might be some on the west. 50' is the EPA standard for Wetlands.

Planning Board would like to have her show the Wetlands area from drainage.

MOTION:

George Holt made a motion that the Dunbarton Planning Board waive the amended waiver request:

(20) Features such as existing water courses, water bodies, trees, landscaping, existing foliage lines, other vegetation, rock ledges, stonewall, and any other human made or natural features, in accordance with Section VII. A. Design of the Development.

and to show 100' from the edge of the driveway around the area of the building and show 50' on each side of the roadway. Les Hammond seconded the motion. The motion passed unanimously.

Board Discussion: Attorney Cronin noted that as the project relates to the use: Dunbarton Zoning specifically allows this use. A number of people spoke against it and some in favor

Architectural:

Ken Swayze noted the applicant has only submitted the barn's length, width and height. The Planning Board would like the setbacks on the actual drawings in addition to the following:

1. The plans that were submitted were from a barn from Pennsylvania. There is going to have to be an engineering review per New Hampshire Standards.
2. Should show life safety issues, access to get fire trucks access, etc. You don't always plow around these buildings. What about plowing for safety reasons?
3. We are more concerned about HVAC plan. We need to see what are these fans going to do.
4. What is your electrical service?
5. When you submit a building permit plan, this will be sent for an outside review. Architecturally we are looking at protecting the area and development buffers. People wanted screening and planting.

Jen McCourt stated there will be a 60' wide buffer around the project. It is an existing woods buffer. There will be a "no cut" buffer. Will conform to Agricultural Best Management practices.

It was noted that the Planning Board recommended the buffer be a 100' wood buffer due to it being a sensitive spot. Noted that there are abutters living all around this project.

Jen McCourt, Engineer, stated she had addressed the comments made in Kelly Dearborn- Luce's e-mail dated October 18 as follows:

1. Revised the list of abutters as requested.
2. Sheet 2 of 5 - Put in large block for Notice of Decision.
3. #1 "Purpose" have defined and described the barn.
4. Note 16, have included the following:

"IN ACCORDANCE WITH THE ASSOCIATED REGULATIONS FOR THE TOWN OF DUNBARTON SITE PLAN REGULATIONS, DUNBARTON FIRE DEPARTMENT, US ENVIRONMENTAL PROTECTION AGENCY, THE FOOD AND DRUG ADMINISTRATION, THE U.S. DEPARTMENT OF AGRICULTURE, FDA EGG SAFETY RULE, HOMELAND SECURITY ACT, FEDERAL POULTRY DISEASE EPIDEMIOLOGY STANDARDS, USDA NATURAL RESOURCES CONSERVATION SERVICE CONSERVATION PLAN, AND NHDES BMP'S FOR AGRICULTURE:

- a. THE ROAD WILL BE WIDENED TO 18', EXCEPT WITHIN THE WETLANDS, TO PROVIDE ACCESS FOR EMERGENCY VEHICLES. THE WETLANDS CROSSING WILL BE MAINTAINED AT THE EXISTING 12' WIDE OF 130'.
- b. STOCK PILED CHICKEN MANURE AND FATALITY COMPOST SHALL BE STORED IN THE BARN SEPARATE FROM THE CHICKENS, WITHIN A CONFINED AREA TO PREVENT SOIL CONTACT AND PEST PROLIFERATION.
- c. CHICKEN MANURE AND FATALITY COMPOST SHALL BE REMOVED FROM THE CONFINED AREAS A MAXIMUM OF ONCE A MONTH AND AT LEAST ONCE EVERY SIX MONTHS.
- d. SANITATION FACILITIES ARE PROVIDED AT THE CHICKEN AREA PASS DOORS.
- e. STORMWATER IS DIVERTED AND TREATED ON-SITE.
- f. AIR QUALITY TREATMENT IS PROVIDED BY:
 - i. LARGE BARN SIZE TO CHICKEN RATIO
 - ii. REMOVAL OF MANURE TO THE MANURE STORAGE AREA BY USE OF AUTOMATIC SCRAPERS FOUR TIMES A DAY.

iii. PROPER VENTILATION

iv. MAINTAINING A 515' MINIMUM SEPARATION FROM THE BARN TO THE PROPERTY LINE AND A MINIMUM 60' TREE BUFFER.

g. THE AMOUNT OF WATER CONSUMPTION WILL AVERAGE 1,200 GALLONS PER DAY FOR THE BARN. AN AUTOMATIC DRIP WATERING SYSTEM WILL BE INSTALLED TO CONTROL MOISTURE

h. SOUND ATTENUATION SHALL BE ACCOMPLISHED WITH THE CHICKENS INSIDE EXCEPT FOR THE HOURS BETWEEN 12 PM AND DUSK AND THE BARN BEING 515' TO THE CLOSEST PROPERTY LINE.

(Jen McCourt stated we want the chickens laying eggs. We will limit the area that they will run in.)

Charles Frost asked that this be shown on the plan.

George Holt noted that the area where the chickens will be outside should be included on the plan. It will not exceed the USDA Standard. He stated he was specifically concerned about the manure the chickens might leave outside during the day, away from the barn's secure waste storage. Wanted more information about what that space would look like and how Giovagnoli would manage manure in that outdoor pen. Over the course of years, the manure is going to be a lot and the issue is where is the storm water from that going to go? That needs to be addressed".

It was noted that Nitrates is a big issue. Originally all the chickens were going to be inside, now they are going to be outside from noon to dusk. The outside area should be shown on the plan.

Jen McCourt stated the manure is "a very minimal amount you are talking about during those hours". Noted that the term "organic" requires that the chickens be outside during this period.

17. THE USE OF AGRICULTURE, LIVESTOCK, POULTRY, AND SWINE IS A PERMITTED USE WITHIN A LOW DEVELOPMENT RESIDENTIAL ZONE THEREFORE THE TOWN OF DUNBARTON ZONING ORDINANCE ARTICLE 15, (D)(3) AND NH RSA 674-33 REGARDING SPECIAL EXCEPTIONS DOES NOT APPLY. 18. LAYING HENS CYCLED FROM APPROX. 17 WEEKS OLD TO 60 WEEKS OLD.

PLANNING BOARD HEARING COMMENTS:

Jennifer McCourt addressed Planning Board previous hearing comments as follows:

1. See above notes 16, 17 and 18

a. The Building Orientation and Architectural Design Standards. The building is 515' to the nearest property line with a preserved 60' vegetated buffer adjacent to the proposed barn.

She said she would "re-visit" this.

b. Public Safety - Please see responses from Fire and Police Departments.

c. Flood Hazard Area - does not apply

d. Ground water - The proposed use is 1,200 gpd which is less than the demonstration threshold of 2,000 gpd.

e. Impervious surface is less than 15% as required by the Zoning Ordinance.

**f. Landscaping Standards -the barn is located 515' minimum from the property line and a 60 foot existing tree buffer will remain adjacent to the barn. **

She said she would "re-visit" this.

g. Noise - Sound attenuation of the chickens will be accomplished with the chickens inside the barn except for the hours of noon to dusk and with the barn being 515' from the property line. The emergency generator will be a sound attenuated unit.

h. Off Street Parking and Loading Requirements - The facility is managed by the occupants of the onsite residence and parking is provided at the homestead. Loading and Unloading areas are provided at the homestead. Loading and Unloading areas are provided at either end of the barn.

i. On-Site Waste Storage and Disposal - The enclosed manure from the barn area will be scraped 4 times a day to a manure pit and removed no more than once a month and no less than every 6 months. The enclosed fatality compost area shall be removed every 4 to 6 months.

j. Screening and buffer Strips - the barn is located 515' minimum from the property line and a 60 foot existing tree buffer will remain adjacent to the barn.

k. Sewage Disposal - a septic disposal system is designed and permitted for the utility sink in the egg collection room.

l. Stormwater Management - See the Stormwater Management plan.

m. Road Construction Standards - at the request of the Fire Chief the access drive is upgraded to 18 feet wide except for the wetland crossing area that will be maintained at 12 feet. The intersection of the driveway and Twist Hill Road meets AASHTO requirements for truck sign distance of 433' provided where 400 feet required and turning radius.

n. Surface Waters and Wetland Resources - See Stormwater Management plan.

o. Traffic - the increase in traffic is an average of 3 truck trip ends per week.

p. Water Supply -- The proposal is for a new well to supply the required 1,200 gpd. Enclosed is a subdivision conceptual plan that indicates that easily three residential homes could be added to the front of the property that would require 1,350 gpd. The new well is over 515' to the nearest property line. No adverse effect from the water supply for this project will occur.

Additional requirements being met by complying with State and Federal regulations are Air and Odor quality. This is accomplished by Best Management Practices in the treatment of the manure and fatality compost and preserving the 50 foot wide adjacent buffer.

2. Wheeler Family Trust Access -

The Plan reference note 7 is added to the plan to address the access to Map C6-03-08 (Wheeler Family Trust Lot).

Stated this ROW has never been defined. We are not restricting crossing of our land from the Wheeler Family Trust. Could not determine where the access is located.

Basic Safety Concerns:

Noted that both the Fire Chief and Police Chief were present. Asked each if they had any further concerns.

Jon Wiggin, Fire Chief, stated he had looked at the plan and had nothing to add this evening.

Dan Sklut, Police Chief, stated he had not seen the plan yet.

John Cronin, Attorney for Giovagnoli:

Discussion on Appraisal/Devaluation of Property Values Report:

Stated that there was some suggestions at the last meeting about the project in Bethlehem whereby a party acquired a Covenant to prohibit poultry. Tom Giovagnoli wants to go forward with the project. We are making a suggestion that if the people could acquire some type of agreement/covenant, we would be open to considering it. We recognize that it is outside the Planning Board's jurisdiction but noted that as a matter of record and that someone could offer development rights.

Have agreed to funding the two consultants reviews of Engineering and Central New Hampshire Regional Planning Commission. Need a clarification as to the requested report on appraisals and/or devaluation of property values. Usually do more on Economic Impact Studies such as what type of impact will this be on the school system, etc. With this project, there will be no impact on the school system.

Ken Swayze noted that it was mostly the abutters who were talking about devaluation of property values. You need to articulate what will happen or what will not happen or hire a Consultant.

Attorney Cronin stated that it was his conclusion that where something is allowed by right, it is an Allowed Use. Could hire a consultant and he could say this is going to devalue property values, or it may enhance property values. It is my determination that this is not really relevant to this discussion. This is a matter of right. The appraisal report doesn't add anything. Some people are attracted by farm areas.

Board Discussion:

Mike Guiney stated he did not feel we need a report from an outside source/appraisal company.

Charles Frost stated he felt land values has been a concern. Felt we need a Consultant's Report.

Les Hammond - Stated we can make our own judgment.

Alison Vallieres - Stated she felt the Planning Board should have an outside Consultant do a report on Possible Devaluation of Property Values/Economic Impact Report rather than take the word of the attorney for the applicant. There has been much discussion about this from abutters and concerned residents and needs to be addressed.

There was no final determination made by the Planning Board.

Abutters (Who have not spoken in the past at previous meeting):

Lee-Anna Bruzga - Stated that her position was that this is an agricultural based town and what we see is an agricultural project. I don't feel that the Giovagnoli project will devalue the property values. We live in the country and we have to have some sort of stable agriculture, and for us not to support that is shameful. We support all kinds of other activities. Why can't we support this. My property is almost directly across the street. I want to have some organic eggs. We have to support people like Tom. My vote is to allow him to do it.

Kathy Beale - Just because we say it is an allowed use does not mean it should be allowed. Now the chickens are going to be outside. Last meeting they were indoors only but now they are outside during the day until dusk.

There is a lot of variation for "dusk". They say there will be a "minimal" amount of manure from 20,000 chickens. I don't consider that minimal. What about the roadway that was increased to 18' but only 12' for the wetlands. But there is no wetlands. They don't want to expand it.

It was noted the road through the Wetlands is already there. It also requires a Wetland Permit.

What about the Tax Impact on other properties when all of our properties are devaluated. Who is going to pay the difference in Tax Dollars?

Catherine VanNorstrand - Read the following statement:

"Imagine it is a beautiful summer day and you decide to take a walk or a run down one of our lovely Dunbarton roads. A short way into your journey, you spot what could only be the squished remains of some poor critter that lost the battle with a car. You automatically move to the other side of the street, not only to get away from what you see, but also what you smell. The smell of death is overpowering. It seems like you still have that smell in your nose and in your hair and on your clothes for hours after you get home.

Now imagine there are ten or hundreds or even thousands of those dead little critters shoveled into a space with the only thing separating you and that smell is what was described by Mr. Giovagnoli as a garage door. That is what is proposed for the chicken barn... a place proposed to house 20,000 birds with a shorter life span than your kid's gerbil.

Oh yes, and if you read the fine print, the live chickens will be allowed outside from noon to dusk.

So, forget about the smell for now... oh wait, we can't, we live here... Anyway, other than the smell of death, not to mention manure, what in the world will be attracted to a garage full of dead chickens... about a mile as the crow flies from the Kimball Pond preserve...

Well, let's see... we have the resident red-tail hawk who seems to realize how many mice and chipmunks reside in Dunbarton.

Don't forget the crows and turkey vultures...

And then there are the resident coyotes, which, from my house, sound like they live somewhere around the VandeBogarts....if not actually on the Giovagnoli property....and sound like a band of screaming monkeys each time they get a kill.

And, last but not least, bears...since we moved here in 2007, we have had a bear in our backyard every year except this year...and that's not to say he hasn't shown up this year, we just might have missed him.

Have you ever seen what the bears in Yosemite do to a locked vehicle when someone leaves a ham sandwich in a locked cooler. They destroy it. A multi ton vehicle, destroyed.

Not a chance a garage door is going to stop him.

So, image again it is a beautiful fall day and any number of the little kids living in the vicinity of the Giovagnoli's are playing in the leaves, playing on their swings, playing fetch with their dog.

If they can stand the smell, that is, but I digress...

Yes, beautiful fall day, kids and dogs and people minding their own business, playing on their own property...any one of those scavengers looking for a free meal is walking through your yard and mine, homing in on that smell...

What do you say to the family at the hospital when you have to explain that kid, that dog or that Dunbarton resident was just attacked by a wild animal because someone decided it was a good idea to put 20,000 chickens not in the middle of some vast farming community, as they would have you believe, but on a piece of land smack dab in the middle of hundreds of residential homes, and hundreds of families.

Mike Koss, 244 Montalona Road - Stated that every one of these neighbors' waste water goes through my property. Nobody knows any history. The property previously was the Godbout farm and they had 60,000 turkeys. This facility is going to keep all of that water away. All this water is going through my property. My water is fine. I don't see what all the concern is about. I support this farm fully and we need a lot of people like Mr. Giovagnoli and make good food to eat.

Andrew Giovagnoli - Stated that his grandfather built a barn in Manchester and he had to drive a tractor to Manchester. We lived in Goffstown for 5-7 years and were looking for a farm. We looked into the Zoning in Dunbarton and moved into an entirely Agricultural Town and now to have everybody stand here and say we're encroaching on their environment. I am sorry, we bought our house back in 2000, and Dunbarton was still as fully agricultural then as it is today.

Fred Mullen - Stated when we first came to this Town, we came to a farming community. There were two farms, one being the Stonehurst Farm. Jim rented fields all over town and spread manure all over town. Feel that we all should support what he wants to do.

Nathan Narus - I just want to say that nothing gives me more peace of mind than enjoying the animals and am happy that Tom is doing this.

Jan Rancourt - Stated she took pictures. They are stating there is a 60' tree buffer. That is not so. These trees were taken down. This picture is the line of trees there now. There are no trees. There is 60' of grass but not 60' of trees. They already cleared the land. It is just open wetland. There is a clear view of that barn with no buffer. If there is to be an impervious buffer, they will have to plant trees in that buffer.

Jennifer McCourt stated that the trees within the 60' buffer are not all conifers. There are deciduous trees but they still add to the buffer. They may be able to see the barn. It is an Agricultural Use. As far as being seen from the neighbors, you may see it from the neighbors but a buffer on the plan is showing the tree area.

Charles Frost stated he thought the buffer was on the plan for odor control.

Jennifer McCourt stated that deciduous trees provide for the dispersal of the odors. The canopy there is just not impermeable. Attorney Rancourt's home is not there. (Attachment #5)

Attorney Rancourt stated these pictures were taken from the Webb/West property.

Craig Webb - Stated that there should be a \$300,000 home sitting on the land and there is nothing.

Ann West - Stated that with regard to the buffer, the 60' buffer might be sitting on my land. You are supposed to provide a buffer. The manure is going to be open. After 5-8 years, manure will build up and it is not going to be contained. What about the septic system? It is only going to be for a wash sink. Where are your employees going to use the bathroom? This is an extremely large change of use for the neighborhood. You haven't had a farm in twenty years.

Barbara Anderson, 85 Twist Hill Road - Stated that she loved Twist of Fate Farm. They bought and owned their own livestock. This is a Commercial operation. The chickens are being supplied by Pete and Gerry's. He is only managing them. Pete and Gerry's are going to pick up the eggs. See it truly as a Commercial Use. Would love to have a little farm stand in the area. You are talking about 20,000 chickens owned by Pete and Gerry's and managed by Mr. Giovagnoli. I am not concerned about the building. I am concerned about the use. Have you really thought about the Commercial Use or Agricultural. Should this go before the Zoning Board? (Attachment #6)

Merle Chapman - Are we going to get an updated contour plan showing the existing contours? He has destroyed the land and the trees. Are there going to be new contours shot there? Need to show the survey and date of the survey. Are you going to show the current topography? It has changed some. Don't feel the Town has been given what is out there now. We are right on the edge of an Alteration of Terrain Permit. All I can ask is that the Town should have an updated plan of the terrain alternation. What is there now is between the existing contours and what the final plan will be. Re Alteration of Terrain, noted that they are below by a few thousand square feet. Presented letter expressing his concerns (Attachment #7)

Charles Frost - Stated that at the last meeting, you stated that the upgrading of the road was not being included. You are increasing the size of the road. Is that exempted?

Jennifer McCourt stated she included the upgraded portion of the road in the calculations. Ridgely Mauck- Stated that the 12' width of the road is a maintenance issue and does not get into the 100,000 square feet requirement.

Frank _____ Why is there no questions about whether the chickens go outside. They also say the same barn that you say. There was an area that was fenced off. It has to be put on the plan. Please take a look at that and ask questions.

Robert Dufrense - This is a chicken barn. You have 20,000 chickens outside and there is going to be manure outside. If it rains, it is going to wash into the wetlands area. The Wetlands are 40' and 30' on the other side. What about the drinking water. People have said it will not affect the wells in the area. I have two wells on our property because we don't have enough water. He could be tapping into anyone else's well which could mean it would affect mine. It could be contaminated. They live by the wetlands. I don't have 20,000 birds.

Paul Veillieux - The plan says it is a 11' wide road.

Jennifer McCourt stated it is a 18' foot wide road and through the wetlands is 12' and goes back to 18'.

Nancy LeBlanc - Stated she was Roland Godbout's daughter and we owned the farm since 1938 and he farmed between 6,000 - 8,000 turkeys and where my house is sitting is where he had the turkeys and my water is fine. More power to him and we live right across the street from Tom.

It was noted for the record that a letter had been received from Janice and Jan VandeBogart expressing concerns. (Attachment #8)

It was noted for the record that Margaret Watkins was present. She stated she had already submitted a letter for the record. (Attachment #9)

Charles Frost asked where they would be storing the food for the chickens.

It was noted the food would be stored inside the barn.

The Public Hearing was continued to the next regularly scheduled Planning Board Meeting on Wednesday, December 18, 2013.

2. *Dunbarton Planning Board Draft Minutes- Wednesday, December 18, 2013:*

CONTINUED PUBLIC HEARING FOR SITE PLAN REVIEW - TOM GIOVAGNOLI (D6-04-02)

Ken Swayze, Chairman, noted that there is an updated Status Report as of December 16, 2013 for the Thomas Giovagnoli Request for Site Plan Review. (attached)

Ken Swayze, Chairman, announced there has been no new information received to date from the applicant or applicant's representatives.

He stated there is a request to the Planning Board for an extension for thirty (30) days to allow him to stay in the system for this meeting. This is the meeting that the Planning Board will act on the request for the 30 day extension. He suggested that the applicant should request a ninety (90) day extension instead of thirty (30) days.

At this point in the meeting, Ken Swayze, Chairman, asked Alison Vallieres, Secretary, to read a Time Frame for the Giovagnoli Request for Site Plan Review.

Alison Vallieres read the Time Frame and noted that the request for the thirty day extension would bring him to the date of this meeting (December 18) and nothing beyond. (attached) She suggested that he should probably consider requesting a ninety (90) day extension at this time instead of the thirty (30) day extension. This would give him another sixty (60) days to bring the plans up to date with items as requested by the two Consultants. (Northpoint Engineering and New Hampshire Central Regional Planning Commission)

Mr. Giovagnoli stated he only would be requesting the thirty (30) day extension because he would be requesting the Planning Board to give him a Conditional Approval this evening. He stated that Attorney Cronin had written a letter to the Planning Board stating that he would not be continuing to attend the Planning Board meetings based on the fact that the legal and engineering costs are way beyond budget, etc. (attached)

MOTION:

Les Hammond made a motion that the Dunbarton Planning Board grant the request for a thirty (30) day extension as requested by the applicant, Tom Giovagnoli. George Holt seconded the motion.

Board Discussion:

At this point in the meeting, George Holt stated that just as a matter of information to the applicant, we have requested a number of items that have not been put on the plan. Would strongly suggest that they seek a ninety (90) day extension. If we were forced to vote at this time, it would be denied. That is only my opinion.

Charles Frost stated he agreed with George Holt. We have had two studies done and a lot of points have been made. They were just delivered at the last meeting. They have asked for certain changes on the plan. Other examples were increasing the buffer from 60' to 100'. Where are the chickens going to be when they are outside? These questions need to be answered and also put on the plan as recommended by the consultants.

Alison Vallieres stated she agreed with both George and Charles Frost. We need a complete plan with all the changes incorporated on it before we can vote on it. We have an obligation to the concerned abutters that we have addressed all these concerns/recommendations. When the final plan is recorded, we need all the information on the plan, not just what we have so far. We need a complete plan to be recorded at the Registry..

The motion passed unanimously.

Tom Giovagnoli stated he was requesting the Dunbarton Planning Board give him a Conditional Approval this evening. He stated he could not continue to pay the engineering company, surveyor, and lawyer, etc. for every meeting. He stated that Attorney Cronin's letter explains this. Stated the Planning Board needs to look and make a list of conditions that you feel need to be put on the final plan and make a Conditional Approval this evening. Stated he was not going to prepare new plans. You keep asking for more. Stated that he has given the Planning Board reports from various agencies that address these items. State Department of Agriculture, Merrimack County Extension Service, etc. Will have to spend another \$20,000 to get these things on the plan the way the Planning Board wants it. George Holt stated that the outdoor management of the chickens does not appear on the plan. How is this going to be managed?

Ken Swayze, Chairman, stated that we are not prepared to give a Conditional Approval. The plans that have been presented are not acceptable yet.

There was considerable discussion as to why Mr. Giovagnoli needed to have a Site Plan Review. He presented Ken Swayze a copy of the Site Plan Review Regulations and told him to point out where it states this is required.

Ken Swayze read the following sections of the Site Plan Review Regulations:

Page 1, SECTION II. PURPOSE

"The purpose of the Site Plan Review process is to protect the public health, safety and welfare; to promote balanced growth; to promote the timing of development to prevent premature and uncoordinated development of land without the adequate provision of public services and facilities; to ensure sound site utilization; to avoid development which may result in negative environmental impacts; and to guide the character of development. "

Page 4, Section IV. SCOPE OF REVIEW as follows:

"Any proposed residential or non-residential development, or proposed change or expansion of an existing use of a site, or any changes that are proposed that differ from an existing site plan as previously approved by the Planning Board, prior to construction, land clearing, building construction or alternation and before any permit for the erection of any building or authorization for development on such site shall be granted, shall require the owner of the property to apply for and secure from the Board approval of such proposed site development in accordance with procedures outlined in these Regulations. The Board shall have the responsibility for making the final decision as to the necessity of Site Plan Review. "

"A. Applicability

The Planning Board or its designee shall use the following criteria to propose whether the activity requires site plan approval:

- 1. If the proposal involves new construction of non-residential or multi--family development.*
- 2. If the proposal involves a change of use category, e.g., from residential to commercial, or from single family to multi-family.*
- 3. If the proposal involves external modifications or construction, including parking lots (except for single family or duplex housing).*
- 4. If the proposal involves a property that has never received Site Plan Review approval from the Planning Board for previous non-residential or multifamily residential use.*
- 5. If the proposal involves an increase in the level of activity. "*

Tom Giovagnoli stated there are other large barns in the area that did not have to get Site Plan Review. Why do I have to? Stated there is a large barn on Twist Hill Road that did not get Site Plan Review. Where in the Site Plan Review Regulations is it required for an Agricultural Use.

At this point in the meeting, Ken Swayze asked Alison Vallieres to explain. She stated that these barns are for personal use and not a business. If a barn rents out stalls, gives riding lessons, it is a business and would require Site Plan Review. Regarding Cater Stables, this was built in 2007, two years before Site Plan Review came into being.

Charles Frost stated that there are many unanswered questions from the two consultants' reports. Don't see how we can approve any plan. These questions have to be answered and put on the final plan before we can vote.

Ken Swayze stated in the beginning the Board suggested the applicant get some top heavy professionals from UNH, Department of Agriculture, USDA and NRCS along with Soil Management people. I don't know what else to do.

Les Hammond stated he had nothing to say at this point. We could lay it out and go through the minutes and see what needs to be added. A lot of money has been spent on this. Maybe we have got to pick out what we need by going through the minutes, etc. Stated the items have to be put on the plan. He has a bit of a way to go but don't think it is a long way. Suggested that he ask for a 90 day extension and put the items on the plan.

George Holt asked Mr. Giovagnoli if he would request another 90 day extension.

Tom Giovagnoli stated that he would not request another extension. He stated he cannot spend another \$50,000.

At this point in the meeting, Ken Swayze, Chairman, opened up the Public Hearing for the public to speak. Stated we have heard enough about manure management and why a chicken farm should not be in Dunbarton. Would like to hear from anyone who is in favor of this project.

Mike Bergeron - Stated you are saying there are 50 items that should be on the final plan. Where does the buck stop? How many things does he have to come in with? Tell him what he needs to do and where does it end.

Jayne Rancourt - Mr. Giovagnoli doesn't have to be either residential or non-residential This is a proposed change of use or business or any changes that are business. It just doesn't have to be classified as residential.

Richard Urbans - Stated I am just appalled at the time span that Tom has been trying to get a barn built in Dunbarton. All he wants to do is grow some eggs. I don't see the big issue. You are punishing this man month after month.

Gordon Young - Stated he agrees with this gentleman.

David Bishop - What are the questions? What makes what he is proposing any different from all the other barns.

Ann West - You are asking how is this barn different from the others. None of the other barns have chickens. They are horse barns that are for personal use only. One barn was built before the Site Plan Review Regulations. That is a very large operation. That is one of the reasons we did the Site Plan Review process.

Mel Gendron - Asked if there is going to be a generator on site. If you lose electricity which we do all the time, what happens to the chickens? What happens to the 20,000 eggs? What about the automatic manure, disposal etc.? I am sure something is going to break. What are you going to do with 20,000 eggs per day?

Mr. Giovagnoli stated he will have a generator on site. Someone will be taking care of the chickens.

Bob Dufrene, Twist Hill Road - This isn't just a barn going up. There is public concern for health , air quality and water quality. Most of the people came here at a time when the property was not being operated as a farm. A lot of people have built houses in this area. This is a farm area. I am concerned about who checks the water quality. Is Mr. Giovagnoli responsible? Who checks to see because we are all going to be affected.

Tom Giovagnoli stated that if his existing barn was filled with chickens, it would be a lot smaller than what he is going to build. If these birds were not certified as organic, he could put in 40,000 chickens in his existing barn. He stated he would not have to apply for Site Plan Review.

Merle Chapman - Stated he has sat through many Planning Board meetings in other towns. This is the process that you have to go through. This is part of the process and it depends on how well it is presented. Everything is not on the plan that is requested by the Board.

Town Officials:

Jeff Crosby, Road Agent - Ken Swayze asked Jeff Crosby, Road Agent, if the driveway entrance has been addressed satisfactorily on the plan at this point. Do you feel the information given is workable?

Jeff Crosby stated that we need to show the driveway entrance on the plan. As yet he has not gotten an answer.

Jon Wiggin, Fire Chief - Stated he had asked that the roadway into the barn be widened. He is going to have to maintain the road. If he doesn't maintain it, the tractors and trailers are not going to get in there. There are no life safety hazards.

At this point Tom Giovagnoli asked what makes his barn any different than any other barn. There is a large barn on Twist Hill Road that I can see from 1/2 mile from my house. How is my barn different than this one?

Ken Swayze noted that Carroll Street Auto and other applicants went through Site Plan Review.

Craig West - Stated that the Giovagnoli barn is a Commercial/Industrial Use.

Tom Giovagnoli questioned the large barn down the street from him. At this point in the meeting, Kelly Dearborn-Luce noted the following: Yuki Igari, 227 Twist Hill Road - 12,800 square foot barn for an indoor riding rink for personal use. Had all inspections.

Cater Stables - Built barn in 2007 prior to Site Plan Review

Patricia Shearin - Stark Highway North - 9,108 square feet for personal use.

Tom Giovagnoli asked what sets my barn apart from the rest of the barns. The Zoning Ordinance clearly states what agricultural uses have to get Site Plan Review and the only one is a Veterinary Clinic.

Board Discussion:

Les Hammond stated he really felt that Mr. Giovagnoli should get an extension and have his engineer go through it and make the changes. If what the Board is doing is illegal, Mr. Giovagnoli's Attorney would have picked it up. All the information has to be on the plan. He stated there are no guarantees. Board members agreed that they would not grant a Conditional Approval. They noted they do not even do it for small projects.

MOTION:

George Holt made a motion that the Dunbarton Planning Board deny the Giovagnoli Proposed Plan for Site Plan Review on the basis that the applicant has not provided the Dunbarton Planning Board a complete final plan with information necessary to consider this plan complete. The Dunbarton Planning Board has provided information to the applicant that would give him enough information to develop the plan to a point where the Planning Board could bring it to vote but it has not been provided. Information has been provided to the applicant i.e. engineering studies and Planning Board minutes from the last meeting which are specific as to the information that is required. Alison Vallieres seconded the motion. The motion passed unanimously.

There being no further discussion, the Chairman closed the Public Hearing.

TOWN OF DUNBARTON, NH PLANNING BOARD **STATUS REPORT DECEMBER 16, 2013**

Applicant/Owner: Giovagnoli, Thomas

Gen. Description: Site plan review for a proposed 46' x 588' (27,048 sq.ft.) barn to house 20,000 laying hens

Lot is in the Low Density Residential District which allows specified agricultural and/or public/institutional uses (and 5 ac. / 300 ft. frontage).

This lot is 83 acres and 400+ feet of frontage on Twist Hill Road. Twist Hill Road is a Class V / Town maintained road.

Record and History Synopsis:

- 1. Owned by applicant since November 30, 2000.*
- 2. Prior occupancy and use was by Godbout family which operated a turkey farm.*
- 3. Property is subject to deed restriction that no commercial pig farm shall exist and a typical pole line easement.*
- 4. Parcel is in Current Use.*
- 5. A prior outstanding enforcement action regarding Accessory Apartment has been corrected and approved by the Building and Fire Departments.*
- 6. Preliminary building permit reviewed by Building Inspector Kyle Parker on February 14, 2013. A letter sent to the Board of Selectmen on February 19, 2013 from Kyle Parker for request of building permit fees to be waived and Kyle notes (in the same letter) the applicant needs to talk with the Planning Board.*
- 7. March 18, 2013 the Planning Department receives the proposed barn site plan application.*
- 8. April 17, 2013 Planning Board hearing, the Site Plan Application is accepted for completeness. Waivers requested from Section VI 1, 2, and 20. Hearing continued to May 15, 2013. Surveyor Jacques Belanger gave general overall presentation. Abutters and audience expressed some of their concerns-*

i.e.; well location, access road, agricultural best management practices, management of wetlands, water quantity, truck radius, hours of operation, fire suppression, run off of drainage, etc.

9. Applicant withdrew from May 15, 2013 meeting.

10. May 31, 2013 appeal filed to the Dunbarton Zoning Board from Abutter Kim Chapman through Attorney John Sokul.

11. Applicant chose not to move forward. ("at stay" until appeal process completed)

12. June 26, 2013 Attorney John Sokul withdrew appeal until further notice.

13. Applicant withdraws from possibility of July planning board meeting, citing the revised plans not ready.

14. Applicant withdraws from August meeting. Revised plans not ready; will have new authorized Engineer, Jennifer McCourt.

15. Revised and updated plans received by Planning Department on August 27, 2013.

16. Jennifer McCourt notifies the Planning Department she will be out of the State for the September meeting and plans to be on the agenda for the October 16, 2013 meeting. Page 1 of 5

17. 2nd hearing held on October 16, 2013. Minutes have been sent out to each member. The hearing is continued until the November 20, 2013 meeting.

18. Applicant to respond with answer of request for third party review for (1) engineering for technical review if plans, (2) CNHRPC to review our regulations and ordinances for code compliance and (3) appraisal report for potential devaluation of neighboring properties.

19. Applicant's and Agents respond to Engineering and Code review and payment in the amount of \$2,650.00 was made by applicant on November 1, 2013.

20. A letter from the applicants Attorney received on November 1, 2013 to request the Board withdraw the "appraisal" 3rd party review request.

Review Comments: for October 16, 2013 meeting

Jennifer McCourt, Engineer has submitted written report addressing several of the concerns that were discussed at the first hearing on April 17, 2013.

New updated/corrected list of abutters has been submitted to Alison Vallieres, Secretary.

New septic design for agricultural use site plan is proposed, (first set of plans noted no bathrooms except a chemical toilet would be on site.) The revised plan has septic design for employees.

Applicant has own Attorney – John Cronin.

Notices and copies of application and revised plans were sent to the Department Heads on September 9, 2013. Police Chief, Fire, Chief, Road Agent, Building Inspector, Board of Selectmen, and Conservation Commission.

Concerns from Departments to be addressed. (i.e.; Fire Chief and Police Chief concern with access and widths of access, and Conservation concerns of wet areas.)

Written comments received from Police Chief Daniel Sklut: "I am happy to see agricultural pursuits in Dunbarton. My only concern at all with this proposal is the tractor trailer traffic hauling eggs and waste on this winding country road. I viewed the approach to the access area from Twist Hill Road on to the property from both the north and south. There should be adequate visibility from either approach for a vehicle operator traveling at a reasonable speed to see a large vehicle enter or exit the property".

Written comments received from Fire Chief Jon Wiggin: "On Giovagnoli's plan I am concerned with the width of the access road; the Fire Department likes 18' roads taking in consideration of snow reducing the width of the road in the winter and being able to pass another vehicle if necessary.

Further on in the project the building plans and construction practices will be a concern and will have to be reviewed by the Fire Department".

Need height of building proposed noted on the plan. Engineer states in narrative only.

Exterior lighting is required, but not shown on plans.

All required DES permits are required to be secured. (i.e.; wetlands, etc.)

Storm Water / Site Specific management plan has been submitted.

Some minor administrative changes and other items of corrections to be addressed.

Site visits were done by some of the members of the Planning Board and Conservation Commission at various times. Planning Board members, Mike Guiney and Les Hammond visited the similar facility owned by Pete and Gerry's in Monroe NH.

Referenced Waivers VI, B, 1, 2, and 20 are:

(1) Surveyed property lines, utilizing the NH State Plane Coordinate System, showing their bearings and distances and showing monument locations every 1,000 feet,

(2) 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.

(20) Features such as existing water course, water bodies, trees, landscaping, existing foliage lines, other vegetation, rock ledges, stonewalls, and any other human made or natural features, in accordance with Section VII.A. Design of the Development.

2nd Review Comments: for November 20, 2013 meeting

On November 1, 2013 the office received updated/revise plans and correspondence.

Some new items that have been noted on the plans are:

Previous Administrative corrections have been made. (I.e.; Lot numbers and/or spelling corrections)

Notes on Sheet 2 of 5 that are new:

Note #1 explains the purpose in more details.

Note # 6 list the sight distance as (required minimum is 399' and provided is 433')

Note #12 added the word "average" to the truck traffic is 3 trip ends per week. During spring road weight limit posting only 2 trip ends will be allowed.

Note # 16 lists the conditions (Site Plan Regulations) a through h. per request from Chair at meeting held on

October 16, 2013.

Note # 17 addresses the "uses" allowed under Agriculture with the LDR District as being Livestock, Poultry and swine. (Although the use of "swine" farm is noted in the deed as a restriction.)

Note # 18 the cycles of laying hens as 17 weeks old to 80 weeks old.

Note # 7 under the "Plan References" is new as it explains the Wheelers property right to cross over.

Revised Plan:

New septic approval number is given as CA2013115130.

Sheet 2 – new 22x22 compost area added.

The square footage of the barn is now 27,600 (increase of 550 square feet).

Generator noted on plan.

Parking spaces noted on plan. 2 spaces at 20x9.

Also submitted with the revised plans:

Sketch showing (example) that the lot could be subdivided as it relates to water supply.

The building construction plans. (5 pages)

Board will review again when all other technical reviews have been forwarded.

November 15th report from 3rd party review, North Point Engineering and on November 18th report from CNHRPC received.

Jacques Belanger requested a 90 day extension at the August 21, 2103 meeting with the Planning Board and 90 day extension was granted. In November, another 90 day request will be required to continue the hearings in accordance to RSA 676:4.

3rd Review Comments: for December 18, 2013 meeting.

No new revised plans at this time. This status report is from the requested 3rd party comments and minutes of November meeting.

21. Two third party reviews have been submitted to Applicant and Agents and available to the Public. The reports are from Northpoint Engineering, Kevin Leonard for the site plan and CNHRPC, Matt Monahan for general comments and zoning compliance review.

22. On November 20, 2013 meeting, the Planning Board and Attorney Cronin discussed the request for a third party review for appraisals of property. No decision was made at the November 20, 2013 meeting

23. *On November 25, 2013, the Planning Department received an extension request for on-going review process for 30 days. The Planning Department suggests that the Board request a longer extension time frame for review of revised plans.*

25. *At the November 20, 2013 the waivers requested from the application process were amended and granted. George Holt amended waiver #20 to show (features) 100' from edge of driveway around area of the building and show 50' on each side of roadway. Board recommended a 100' wood buffer (not 60' as shown) around project.*

26. *Board requested more details relating to the architectural for the barn.*

27. *Board requested that the added concept for the use of the outside area for the chickens be defined, state the purpose and be shown on plans.*

28. *The outside "manure" needs to be addressed with "storm water management".*

29. *Note #17 on the plans quotes the agricultural use out of the zoning regulations, of what is allowed in the LDR. The Planning Department suggests the restriction in the deed, regarding no use of a swine farm, be noted as well.*

30. *Some of the items noted in the Northpoint Engineering report are as follows: In Summary The Planning Department does agree with some of the notes listed and will require the Planning Board approval.*

Site Plan Regulations: 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."

Define buffers. (If forestry or natural or managed) Define "60' vegetated buffers" and what is prohibited in the buffer.

If, Dumpster(s) are being used - defined and show locations.

Requirements for Fire Department access to the building.

Details needed for the architectural design of the building.

Questions of the water run-off when building is "hosed" down. If preventing the run-off from wetlands.

If obtaining an EPA general permit prior to construction.

If obtaining an Alteration of Terrain Permit – close to the 100,000 SF threshold.

Clarify how, when and where the chickens will be outside.

Clarify the onsite processing of collecting the eggs.

Show the proposed utility poles.

Show all building doors. (Man doors and overhead doors)

Define all concrete pads.

Recommend bollards near generator and propane tanks.

Define size and placement of propane tanks and discuss with Fire Chief.

Sound attenuated for generator may need specified decibel level.

Exterior lighting to be shown on plans.

The width of stone drip edges may not be wide enough for roof overhang run off.

Appropriate grading of access road in SW corner is not shown on plan.

528 & 530 contours for gravel area on S side are not shown on plan.

Proposed grading of the two treatment swales not shown on plans.

Elevations of the emergency outlet weir are not specified on plan.

End sections of proposed new drainage culverts not shown on plans.

New 12" culvert for riprap outlet protection plan apron not shown on plan.

Signs for Twist Hill not shown on plan. (Are they proposed?)

Truck access and parking at "loop" may be traffic conflict.

If a lot of truck traffic, paving the driveway is recommended and no grading details for widening improvements.

Recommend sight distance profiles.

The intersection shown exhibits north bound only.

Recommend typical section for the proposed gravel loading area and new access roads be provided.

STORM WATER COMMENTS;

A spot elevation should be added to the plans indicating the pond is constructed as intended and grading plan at detention pond.

A maintenance plan should be provided for proposed infiltration facilities.

(All items listed above are available in full details in North point Engineers Report)

Some Board members have indicated the need to provide “walk-through” details for the storm water management.

The Planning Department will provide the Board with a review of the revised plans and check off the outstanding items on the entire status reports.

APPENDIX 6: Excerpts from Petition in Dunbarton Appeal

Excerpts from Dunbarton Complaint – The Town Answer Essentially Denies All Allegations that its Actions and Decisions Were Contrary to Law or Improper

6. The Plaintiff purchased the Farm in 2000 for the purpose of advancing his fanning and agricultural pursuits.

7. Prior to the purchase, the Plaintiff undertook due diligence investigations and confirmed the Farm was zoned for agricultural use and he could pursue his farming and agricultural pursuits as a matter of right.

8. In the years following the purchase of the Farm, the Plaintiff raised pigs, cows and maintained a small flock of chickens.

9. The Farm was used for many years to raise a flock of approximately 8,000 turkeys.

13. The Plaintiff visited with the representatives of Pete and Gerry's and learned the Farm was in an ideal location, zoned properly and met Pete and Gerry's stringent criteria established for contract farmers.

14. The Pete and Gerry's program requires contract farmers to construct a "state of the art" specialty barn to manage a flock of 20,000 laying hens all according to best management practices.

15. Pete and Gerry's was ready, willing and able to enter into a contract with the Plaintiff if he obtained the necessary approvals and constructed the barn to the required specifications.

17. The Plaintiff did not expect that site plan approval was necessary.

20. The Plaintiff was advised that site plan approval was necessary.

24. The Plaintiff, together with Pete and Gerry's, provided a detailed presentation of the project, the intensity of use, traffic and management practices.

25. The Plaintiff engaged a host of experts to review the site plan and render opinions.

28. A large number of residents, many misinformed, came to the initial meeting and objected to the proposed use in their back yard.

29. The Farm is located in the rural zone.

30. Uses expressly allowed, as a matter of right, in the zone include poultry farming,

31. The zoning ordinance and site plan regulations do not include any restriction on the size of the flock or the size of the barn.

32. The barn proposed by the Plaintiff met all setback, density, height and buffer requirements of the planning board.

34. (cited the agricultural policy statement of “NH RSA 672:1-D1-b” (sic), likely referring to RSA 672:1, III-b.

38. At the second public hearing, the Plaintiff requested that the Planning Board vote on a number of waivers and to make a finding that the proposed use was allowed as a matter of right.

39. The Planning Board found that the Plaintiffs proposal was allowed as a matter of right by the Zoning Ordinance. The Board also voted to grant waivers of certain survey requirements.

40. The Planning Board also determined that the value impacts, if any, on neighboring properties were not relevant as the use *was* allowed as a matter of right and variances were not required.

41. During the second public hearing, many abutters and interested parties. spoke in favor of the proposed use and supported agricultural pursuits. Other interested parties raised concerns about nitrates and water quality.

42. The evidence offered during the hearings is the manure generated by 20,000 laying hens is equivalent to a herd of 60 cows.

43. The Plaintiff can maintain a herd of cows, horses, pigs and other farm animals in unlimited numbers without the need to secure any permits or land use approvals.

46. Prior to the third meeting, the Plaintiff advised his engineer and counsel that it was not necessary for them to attend the third meeting as it was cost prohibitive and the Planning Board already determined the use was allowed as a matter of right.

47. By the time of the third meeting, the Plaintiff had already spent more than \$35,000.00 for engineering fees, drawings, expert reports and counsel fees.

48. The Plaintiff appeared at the third public meeting and requested that the Planning Board grant conditional approval.

51. The Planning Board advised the Plaintiff that is does not grant conditional approvals.

52. The Planning Board's statement regarding its position on conditional approvals was false.

53. The minutes of the public record in other cases, proves without any doubt, the Planning Board does in fact grant conditional approvals.

54. Despite the finding that the proposed use is allowed as a matter of right and the wealth of information provided by the Plaintiff; the Planning Board denied the site plan application,

55. As a result of the difficulty getting approvals and the denial, Pete and Gerry's has withdrawn from discussion with the Plaintiff about situating a contract barn on his Farm in Dunbarton.

(Complaint then alleges damages in various counts).