

August 5, 2019

TO: Town Board, Town of Chatham
FROM: Chatham Agricultural Partnership (“CAP”)
RE: Proposed Zoning Changes

In follow-up to our July 8, 2019 letter to the board, we have prepared this memo to outline specific areas where we feel the current proposed zoning changes could have unintended negative impacts on farming in the Town of Chatham. While it has been apparent that the Town Board supports farming and the goals related to agriculture set forth in the 2009 Comprehensive Plan as well as the Town’s Farmland Protection Plan, we feel the authors of the current zoning may not have fully understood the complexities of the many variables that impact farming and long-term sustainability of farming operations in Chatham.

According to State law, “zoning laws must be adopted in accordance with a comprehensive plan. The comprehensive plan should provide the backbone for the local zoning law.” (*Zoning and the Comprehensive Plan, NYS Department of State, 2015*). Chatham’s 2009 Comprehensive Plan has a strong focus on maintaining Chatham’s rural character and agricultural uses as primary goals. It makes specific recommendations for how to ensure that the adopted zoning will be “farm friendly” Chief among the recommendations is that the zoning allow “a wide variety of uses related to agriculture, having definitions consistent with State guidelines, removal of barriers to farm operations, and adding a modified site plan review process similar to the NYS model. And allow compatible non-farm businesses on farm properties to help farms diversify.” (Goal 1.2.S., pg 96).

We are concerned that the current zoning as proposed does not go far enough to adopt the Comprehensive Plan’s recommendations and has instead implemented new regulations which will unnecessarily burden farmers and create unintended barriers to the economic success of our already stressed agricultural ventures.

The CAP has reviewed both the current proposed zoning (6/5/19) and the 2016 ZIC proposal. While it is evident that many of the ag related recommendations from the 2016 ZIC were carried forward into the 2019 proposal, there are some changes which could have very real impact on the sustainability of agriculture in the Town. For example, several ag-related uses which had been permitted in certain zones now require a modified site plan review.

Farming has changed in the last fifty years, and it is increasingly difficult to support a farm with traditional agricultural practices alone. Land costs, operating and carrying costs including local taxes are obstacles for all but the very wealthy, and even the wealthy who might be interested in farming are unlikely to envision a farming venture in the way the proposed code restricts operations. Today’s farms are complex businesses often with multiple streams of revenue that go beyond the traditional sale of agricultural products, and often include home occupations, agri-tourism operations, farm stays, and destination weddings.

Specific examples of where we feel the proposed code is over-reaching and unduly restrictive area listed below in no particular order:

Agri-Tourism (*definition, §180-58.(Y) Individual Standards for Special Uses*). In our view the section is overreaching, economically restrictive. It suggests a “case by case” review of

proposed activities by New York State Department of Agriculture and Markets (Ag& Markets), exempting only events where **“no admission, facility rental and/or vendors fees are involved”**. Admission and fees can be an important revenue for farms, allowing them to remain solvent. Requiring an Ag & Markets review of any proposed event that charges admissions or a fee is problematic. In our experience, such reviews can be very time consuming, and add an unnecessary bureaucratic layer of review. Further, requiring a subsequent modified site plan review (see below) adds yet another layer of regulation to the farmer. §180-58.(Y) (3) states “All agritourism uses shall require a modified site plan approval as per §180-29 (C) (2).” However §180-29 (C) (2)(a) says the Modified site plan review only applies to certain ag structures over 7,500 sq feet, exempting all other ag structures, and does not mention other agricultural uses at all.

We strongly suggest that agri-tourism in its broadest sense be included in the definition farm operation, making it allowed as of right in all districts without additional permits.

Weddings and Events (*definition*) –Hosting weddings and events can be a great potential source of revenue for farms that has a minimal impact on the agricultural value of the land. The proposed zoning however prohibits (commercial) Weddings and Events in all zones except Business and Industrial zones unless they are part of a farm operation, in which case a modified site plan review is required.

In order to be considered part of the farm operation, by the code definition, a wedding or event (including agritourism) must meet the following conditions “ 1) directly related to the sale and promotion of the beverage produced at the farm (from at least 51% on-farm produced grain, hops, grapes/fruit/juice) or directly related to the sale and promotion of the crops, livestock and livestock products produced at the farm; 2) incidental and subordinate to the retail sale of the farm’s crops, livestock and livestock products or beverages on-site; 3) hosted by the farm (not outside, unrelated parties); and 4) feature the beverage or the farm’s crops, livestock and livestock products produced at the farm... Wedding receptions, parties, and private event facilities that do not meet these criteria even when located on a farm premise shall not be considered part of the farm operation.”

It is hard to imagine how a farm could host an event that would meet these requirements and still yield the farmer any type of supplemental income. The use of outside wedding planners or caterers would seem to be prohibited placing an unwarranted burden on the farm who simply wishes to lease a field for a wedding held by a third party. And even if it did, a modified site plan is required.

Bed-and-Breakfasts and Short-Term Rentals §180-58(Z) Farm Stays have become increasingly popular and are another example of a secondary source of income that has a negligible impact on farm operations, while providing potentially critical income that would allow a farm to stay viable. The current section dealing with Short-term Rental §180-58(Z) requires a Special Use Permit for whole house rentals and requires that they be on the same parcel as the owner-occupied principal dwelling. Farms often have one or more accessory dwellings that may or may not be on the same tax parcel as the farm’s owner. Limiting their rental to just 30 days places an undue economic burden on the farmers limiting their opportunity to supplement their farm income with short term rentals. Exemptions for on-farm short-term rentals and B&B’s should be provided for.

Non-conforming uses Article VI. It’s easy for farm buildings to rotate in and out of use for periods of several years as farmers rotate products, livestock types, or otherwise leave a

pasture or field fallow for longer periods. There may be periods when farms shrink down operations to sell, to tend to other financial or personal needs or for whatever cause, some sheds and structures could easily be out of use during a 2 to year or longer period. This will cause structures to fall outside the short window for non-conformance. §180-60 Discontinuance, should provide a longer window for non-conforming agricultural structures (these would likely only be nonconforming due failure to meet setback or side yard requirements.) Farmers should be allowed to resume use of such structures for agricultural purposes at any time in the future.

Food Processing (*definition*) – On farm processing of animals is not mentioned. Some farms annually slaughter a few animals on-the-farm. Does this now require a permit? There is no mention anywhere in the code of animal processing, so does that mean it is a prohibited use everywhere? What about product purchased off the farm? Can it be processed? ie- if someone is making salsa, but do not grow 100% of the ingredients.

Horse Boarding (*definition/ use chart*). Why does Commercial Horse Boarding require an MSP? This should be viewed as an agricultural use and be a permitted use as per the 2016 ZIC recommendations.

Farm Market (*definition/use chart*) A farm market should be considered an agricultural use and allowed as of right. Requiring a MSP review adds an undue burden, and as cited above it is unclear as written why a Farm Market building wouldn't be considered an agricultural structure and therefore be exempt from site plan review. §180-29 (C) (2)(a).

Temporary Farm Stands §180-52-C– Requiring a 50' centerline setback rather than the 20 feet from right-of way in the 2016 ZIC proposal seems counterproductive. Roads vary in width and the concern should be the distance from the edge not the center of the roadway.

ARTICLE IV. Special Regulations §180-29. Site plan review.

S180-29 (B) (3) "See §180-29 (C) (2) for Modified Site Plan Review for Certain Agricultural Uses as per subsection 180-29 (B) (2)."

What is this meant to reference? §180-29 (B) (2). is an exemption of "Ordinary repair or maintenance of existing structures or uses." from site plan review.

§180-29 (C) (2) Modified Site Plan Review

"(a) Applicability: Any new agricultural structure that is larger than 7,500 square feet building footprint and that is proposed to be sited within the EPO-1 or EPO-2 districts, or any agricultural structure proposed to be built within 100' of a stream or wetland shall be required to meet all requirements and procedures of this Modified Site Plan Review pursuant to this sub-section."

The applicability of site plan and modified site plan review as pertaining to agricultural uses and structures is confusing. S180-29 (B) (3) states all agricultural structures except roadside stands in excess of 100 square feet are exempt from site plan review. Section 180-29 (C) (2)(a) states that only ag structures in excess of ,7500 ft within an EPO or within 100' of a stream or wetland requires a modified site plan review and specifically exempts "Any other agricultural buildings".

What about the agri-tourism and other uses that in use chart say they require a Modified Site Plan Review. This is very confusing.

§180-29 (C) (6) requiring external lighting on a farm to be shielded and/or directed downwards is again placing an undue restriction on farmers. Traditional farmyard lights are sodium or mercury vapor lights that are used to illuminate the barnyard for safe operations after sunset. This requirement runs counter to the goals of maintaining a rural character.

§180-35. Farm Land Protection Siting Standards (B)(5) - requiring a 200 foot buffer on the part of non-agricultural uses adjacent to an agricultural use can have an unintended consequence of making it difficult to achieve the other well-intended aspects of this section. In the majority of cases, it is the farm itself that is subdividing off a parcel, and by requiring a 200 foot buffer, the law may force a farmer to part with more land than they want to meet the other parcel requirements for setbacks, side yards, etc. The language in the 2016 ZIC proposal allowed for more discretion on a case by case basis. "Such buffers may consist of vegetative screening, woodlands, vegetated berms, or natural topographic features and shall be no less than one hundred (100) feet in width. Buffers may be required to be larger depending upon the type of agriculture or farm use adjacent to the non-farm use, the topography and the proposed design and planting of such buffer."

The CAP has contacted New York State Ag and Markets, who approved the Chatham Agricultural Protection Plan, for further assistance in ensuring the proposed Code is in compliance with NYS standards.

If a simple fix is wanted to ensure the Zoning Code meets all the standards of the Comprehensive Plan, the Agricultural Protection Plan, and the needs of ALL the residents of Chatham including farmers, we humbly suggest the Town Board carefully re-examine the Draft Zoning Code as proposed by the Zoning Implementation Committee in 2016, a copy of which may still be found on the Town website, and ask if the proposed new language in fact works to the benefit or detriment of the farmer. This plan was broadly supported by a bi-partisan group including many farmers and the CAP and in most cases was cleaner and more direct in its language and construction.

Respectfully Yours,
The Board of the Chatham Agricultural Partnership

Mary Gail Biebel, *Chatham Keep Farming*
Bob Bradford, *Good Hope Farms*
Tom Clark, *Old Chatham Sheepherding, Co.*
Tom Crowell, *Columbia Land Conservancy*
Willy Denner, *Little Seed Gardens*
Jeff Lick, *Spruce Ridge Farm*
Courtney McDonnell, *Highland Farm*
Eric Oom, *A. Ooms & Sons Dairy*
Edie Root, *Springervale Farm*
Donna Staron, *Staron Farm*

Michael Richardson, *ChathamTown Board Liason*