



Town of Sherman
Planning & Zoning Commission
Regular Monthly Meeting Minutes
Thursday, November 3, 2016 7:00 p.m.
Emergency Services Building, Charter Hall Meeting Room **FINAL**

Members Present: J. Burruano, N. Volkmar, M. Sichel, J. Finch, P. Voorhees, and Alternates: A. Muoio, and R. Peburn

Members Absent: M. Lee and Alternate W. Knaak

Invited: Attorney M. Branse, Zoning Enforcement Officer R. Cooper and Administrative Clerk C. Branson

Call To Order: Chair J. Burruano Called the Meeting to Order at 7:07 p.m.

P. Voorhees was appointed acting Secretary in the absence of M. Lee.

R. Peburn was Elevated to Voting status for the Public Hearing.

Rolf Martin, from the audience stated he wished to video record the meeting.

ZEO R. Cooper was designated the official time keeper for the Public Comment section of the hearing, and will call the names of people who have signed the sheet to speak.

Public Hearing:

Proposed Changes to the Zoning Regulations, New Section: 352 A Farm Wineries

Chair J. Burruano made a correction to a clerical error in the warning: New Section: 352 A Farm "Wineries" should be 352 A Farm "Winery". Acting Secretary P. Voorhees began to read the legal warning into record. Land Use Attorney M. Branse requested the reading of the full regulation be waived since there were so many in attendance wishing to be heard. The Commission agreed to waive reading into record the full proposed regulation. Certified Legal notice was mailed on September 30, 2016 to abutting towns and Planning Agencies. One letter was received from NHCOC stating they have reviewed the proposed regulation and feels no apparent conflict with Regional Plans or policies or known concerns of neighboring towns. Legal Notice was published in the Town Tribune on October 20, 2016 and again on October 27, 2016. Chair Burruano read "the order of business" into record, stating each speaker will be allowed to five minutes and will be called upon in two groups, Proponents and Opponents. No one from the Commission recused themselves from the Hearing. No one from the Audience objected to the seated members of the Commission. Chair Burruano read a prepared statement into record regarding misconceptions of the Commission withholding information; " the Zoning Enforcement Officer, Ron Cooper had nothing to do with instigating review of this regulation. Mr. Cooper's role in Regulation Review is advisory only. Planning and Zoning Meetings are open to the public, the agendas are published on the Town Website and posted at Town Hall prior to any meeting as per the protocol for all Town Commission meeting notices. Minutes are published on the Town website. In an article in the Town Tribune it was implied that Mr. Cooper was not forthcoming with information as to what the Commission was thinking in the creation of this proposal and what their motivation was. He readily supplied the reporter with the information made regarding the proposed regulation itself but was not in the position to answer for the Commissioners as to what they were thinking or their motivation. He advised the reporter attend the Public Hearing to gather details so as not to misrepresent or make any misstatements as to the Commission's intent. There was no withholding of information. And finally P&Z has no intention of using this Regulation to run White Silo Farm out of business, this defies logic, is counterproductive, and would be contrary to P&Z's commitment to follow the POCD. White Silo Farm is an asset to Sherman which we expect to see continue and thrive well into the future. In fact one reason for this draft regulation is to allow that to happen, not to prevent it. P&Z has been actively engaged in ongoing review of our entire Regulations for the past three years. We are committed to continue this review to bring the Regulations up to date to reflect Sherman's present and future needs and also to reflect changes in Federal and State laws. We've brought forth many Regulation changes as well as new

Regulations in the past three years. This proposal is part of a Farm Section 352 being reviewed in its entirety to consider bringing it in line with community needs as modern concepts of farming that are now often termed "Agribusiness" are becoming more and more the "norm". The necessity for review of section 352 became apparent to the Commission when Happy Acres Farm was leased and Full Circle Farm's expectation was to be able to engage in activities that are not customarily incidental to farming. The Planning and Zoning Commission cannot ignore a Regulation that doesn't work in a changing climate and that fails to meet the needs of the community. We cannot and do not write regulations for one property. A regulation applies to every property that meets the criteria. In this case for a farm which is defined in our Regulations as a minimum 5 acre lot in the Farm Residential Zone. The intent of this proposed Regulation is to allow a farm winery as a secondary use to a Farm Vineyard, such use is not currently allowed at all. The Planning and Zoning Commission as the Land Use planning arm of our Town recognizes the evolving face of Connecticut agriculture. As I said before farms are incorporating activities into their operations that have not been previously recognized as activities accessory to farming. Our intention is to expand the use currently allowed under our Farm Regulations, Section 352 to allow greater latitude for farmers to incorporate these activities. Sherman's current farm regulation is narrow in that the only activities permitted are the growing and sale of agricultural and horticultural products, processing of such products and raising and sale of livestock and activities that are incidental to ordinary farming operations. We currently only allow a seasonal farm stand up to 400 square feet for the sale of such products on a property. Permitted uses now allowed under the Farm, Section 352 do not extend to yoga classes, musical events, commercial hosting of weddings, as these activities are not defined as being customarily incidental to the primary use of Farming. Sherman's Regulations are written to be inclusive, in that if a use is written into our Regulations, and is customarily incidental to the primary use, it is permitted. If it is not written into our Regulations, and is not customary to the primary use, it is not permitted. This makes those Regulations overly restrictive for modern agribusiness uses that we think the people of the Town of Sherman want to allow. The Commission is responsible for using the Plan of Conservation and Development as a benchmark for the decisions we make. The POCD was created and is updated every 10 years by Planning and Zoning with significant community input. The final document is approved by our residents at a Town Meeting. It reflects our community's vision for the present and the future. In this case, it charges P&Z to work to preserve our rural character and to support farming. We believe the proposed regulation does both. It supports farming by encouraging farms to be more financially viable (by allowing activities that are not customarily incidental to farming and therefore not currently allowed) to be permitted by Special Permit, it preserves our rural character by encouraging farms to continue to thrive therefore contributing to open spaces and the beautiful landscape that we all cherish. Additionally, it supports the local production of food stuffs which is the most desirable and important contribution to any community and indeed to the community of the world. The Regulation has been created to apply to new wineries while also considering the needs of our current winery in operation White Silo Farm. To the extent their current activities are legal under existing laws their operations as a winery will not be compromised by the passing of this regulation as White Silo Farm will be a Legal Non-Conforming Use, Section 380 in our current Regulations. White Silo Farm may continue their current winery operations with no impact to their business and may intensify their winery operations without the need for a special permit. For example if they have 8 harvest festivals currently they may even increase that number without a Special Permit. A Special Permit would only be necessary for activities that are not incidental to the property use. As a Legal Non-Conforming Use, White Silo Farm may continue to intensify their winery operations without the uncertainty of a future change to the Regulations which could affect them adversely. In addition as a Legal Non-Conforming Use and with a Special Permit in place as necessary, their operations are guaranteed to be safe and their activities are protected legally. With no change to our current farm regulation, a property with a minimum of 5 acres within the Farm Residence Zone may elect to grow wine crops, and therefore have a wine tasting room as an activity incidental to the primary use. We've all seen examples of vineyards in which entertainment venues have become in reality the primary use. Under the proposed Regulation, Wineries will be required to operate within limits that respect the property rights of residences within the Farm Residence Zone. This is achieved by establishing hours of operation, hours amplified sound may be allowed, lighting restrictions, etc. This proposed Regulation is not written in stone, we develop a draft knowing that we haven't heard from the Public yet and that when we do we will hear good ideas that we need to consider and it will probably indicate the need for changes. This a standard in the process when creating or amending a regulation for that public input. A Public Hearing is the opportunity for the community to comment and for the commission to then consider these comments. No Regulation may be enacted or amended without a Public Hearing. And please remember, these Commissioners are elected volunteers who as your friends, colleagues, and neighbors want the best for our town just as you do. Please be respectful of the time effort that they have put in to bring this proposal before you. We are here to listen and we welcome your ideas."

Chair Burruano opened the Public Hearing and requested if the Commission had any questions or comments. The Commission made no comments. Mr. Cooper read the first name on the list: Attorney Kenneth Slater. Atty. Slater came forward to speak in representation of White Silo and requested the Commission allow him additional time to give a presentation. Atty. Slater has had the opportunity to work with the Sherman's Land Use Atty. Mark Branse on several occasions in other Towns and thinks Atty. Branse would agree if he (Atty. Slater) spoke first, many of the individuals here to speak would most likely give up their time slot because their point will have been addressed through the forthcoming presentation. The audience clapped showing they were here tonight in support of White Silo and in consent to allow Atty. Slater to make his presentation. The Commission granted Atty. Slater's request for additional time for his presentation. Atty. Slater stated it was clear by the large attendance tonight in this meeting room, that there is a community uproar caused by the proposal of these Regulations. Atty. Slater stated that he agreed with many points of Chair Burruano's opening statement and hopes there will be more agreed upon rather than disagreed upon. Atty. Slater referred to a section of Atty. Branse's letter published in the newspaper, and referred to similar elements from Chair Burruano's opening statement that he agreed with "under CT law, if an existing use pre exists Zoning it is a non-conforming use and it can continue". He went on to say, what was also pointed out is "that use, a winery with a tasting room is not allowed in the current Regulations". Atty. Slater stated in order for the Winery to be considered "pre-existing non-conforming", they would have had to been in operation before 1937 when the Town's original Regulations were created. White Silo was not in operation as a winery in 1937. Atty. Slater identified a problematic portion of Sherman's proposed winery regulations that are very similar to regulations in Lyme, referring to limiting the amount and number of pours allowed in a tasting room. Lyme's regulations are not consistent with those that are designed to allow enough flexibility to make the farm successful. Atty. Slater recognized many of the current activities taking place at White Silo are not stated as permissible in today's Regulations, and could ultimately result in shutting down operations. The winery relies on offering farm tours, and events to remain successful. Atty. Slater stated this regulation needs to be adopted to protect the operations on the farm. Atty. Slater submitted a red line version with suggested modifications of the currently proposed Winery Regulations that would allow more creativity and flexibility with events, tours, and the type of foods served by requiring a "Statement of Use" to allow conditions to be imposed on a case by case basis. Atty. Slater presented the proposed changes to the Commission, topics included; amount able to sell to in bulk, on property, off property, food prepared and served, special accommodations for weddings, allowing the tasting events to take place on a patio or deck if applicable, eliminating number and volume of pours at a tasting, remove restrictions of types of foods served, Public events and Outdoor events- increase the number of attendees allowed as stated in a "Statement of Use", music extended to a half hour before closing hours if outdoors, if attendees over a certain number "Event Permit", allow busses, etc. Atty. Slater provided the Commission with a collection of adopted winery regulations throughout the State of Connecticut that in his opinion were in large created to enable modern and creative changes in the small farming and agricultural businesses. Atty. Branse requested clarity regarding items struck within "c. Public Events" specifically number of attendees, exact dates and number of annual events. Atty. Slater stated he felt this information would be offered through a "Statement of Use". Atty. Slater is hopeful the Commission will consider the red line revisions and is hopefully be willing to work with himself and White Silo to create reasonable regulations to enable successful farming. Chair Burruano requested the name of the next person to speak for Public Comment. The next person to speak was Atty. Paul Garlasco, stating he has represented the Gorman family for thirty years, and trusts Atty. Slater implicitly to find a solution that he hopes the Commission will embrace. Eric Gorman, owner of White Silo Farm, spoke next, thanking the many, people who came out in show support and stated to the Commission that he fully supports reasonable Regulations. Ralph Gorman, owner of White Silo Farm, expressed gratitude for those who came in support and hopes the Winery will continue for his grandson to take over. Thomas Piel spoke next, stating he felt this proposed regulation was quickly brought to the Public, not allowing time to react. He stated he feels these Regulations micromanage small business. He is hopeful the Commission will set these proposed changes aside and reduce the amount of restrictions set upon the town. Next to speak was Colette Shulman, stating she agrees with a great deal of what has been said this evening. She recognizes that the Gormans have endured a stressful time. If farms are to survive, the Town must allow "agritourism". Ms. Shulman stated she feels Mr. Gorman has pioneered his way through thirty years to create the White Silo Farm, this winery is a win for Sherman, it draws others to shop in its stores and dine in the restaurants here, the town is fortunate to have the winery. Ms. Shulman stated she feels there should have been more public discussion in the creating of these regulations from the beginning. Chair J. Burruano spoke next, in reference to not consulting with the Gormans, it is illegal to write a regulation that is specific to one property. She will look at the process and see what can be changed in the future. The Commission's Meetings are all open to the Public, and the Agendas are posted with the Town Clerk and posted on the Town website. Rolf Martin, spoke next and thanked the Commission for the efforts and thought that goes into the regulations for the Town. He stated through his work he

has had the pleasure of attending tastings of large capacity. He feels the proposed regulations would not allow for such a scale of event and hopes thought could go into allowing larger cross town festivals, it would be good for Sherman and Connecticut. He thanked the attendees for coming out in support, it is good to see democracy in action. Next to speak was First Selectman Clay Cope, served on P&Z previously for 5 years and is requesting to read a letter into record from Atty. Randy DiBella, previously read at the October meeting. Atty. DiBella's opinion is that this proposed Regulation is designed to prohibit rather than allow activities. The reason he wanted to read into record, he would like to respectfully request the Commission share the red line version of the Regulation with his office. Next to speak was Cathleen Harrison, agreeing that Atty. Slater covered all of her concerns, her request while she supports Regulations, seek guidance so that they not be so restrictive as to make it difficult for the Gormans to make a living. Next to speak was Selectman Bob Ostrosky, also a former P&Z Commissioner fully respects the Commission and all of the work that goes into the review of Regulations. Mr. Ostrosky wanted to speak about unintended consequences that come along with the whole picture and take the future into account. Dave Schneiderbeck spoke next, sees all of the work that goes into the proposed Regulations, spoke on behalf of the other small business owners in town, if there was a problem with the Winery they would be out of business. Mr. Schneiderbeck stated he thinks less restrictions for business in town would be better. Barbara Hoag spoke next, thanked the Commission for all of the work that they do. Is in agreement with much that was said tonight, and feels less restrictions for small business and more thought should go into the proposed Winery Regulations. Ms. Hoag asked for clarification on how White Silo would be "grandfathered" when Atty. Slater stated the Winery was not in existence when the original Zoning Regulations were created. Land Use Atty. Mark Branse spoke in response, stating he "agreed with everything Atty. Slater stated. There is something called Legal non conforming use by State law and by case law, no Zoning Regulation can apply retroactively, so a Zoning Regulation cannot apply to or regulate any use that is legally existing at the time that the Regulation is adopted or amended. The difficulty as Atty. Slater pointed out is that many of the things that White Silo currently does aren't permitted now. So this regulation is to allow White Silo to do those things. That is why Atty. Slater has proposed changes to the text and not saying just throw it away and not do anything." Ms. Hoag also asked how the Special Permit process works and would ask it is fair to every business. Atty. Branse responded " the advantage of a Special Permit is that it allows for the flexibility that you are calling for. If you do it by a permitted use then the Regulation will have to state exactly what is allowed." The applicant provides a Statement of use that describes what the business plans to do, a Special Permit would give the Commission the flexibility to approve that case by case rather than having what Atty. Slater a "one size fits all" kind of Regulation. Marge Josephson spoke next, stating she agrees with many of the comments made with regard with having such restrictions in such detail. There are many instances where a specific site may make something feasible to do activities in one location but not on another site even though it may have a similar "label" of an occupation. Ms. Josephson would like to encourage more businesses in Sherman, certainly we'd like to see more innovative farm use and hope that the Commission can rewrite the intent to be more general and make it clear that a Special Permit can be applied for and the Commission will consider all of the health aspects, traffic implications, and hear the neighbors' concerns for any particular case. Ms. Josephson stated she was confused specifically if you have a farm vineyard in a Farm Zone, why 200 ft of road frontage was a requirement when a farm may have space in the back. She has served on the Wetlands Commission and through jobs over many years looking at Regulations and understands how difficult it is to take in all of the details. In closing Ms Josephson stated she agreed with Mr. Piel and asks the Commission not to over regulate the town's small businesses. Catherine MacLean, Full Circle Farm tenant farmer at Happy Acres, wanted to bring up three points; the first being the Gormans have been Full Circle's biggest supporters from the very beginning and farming as a business is almost impossible, the financial picture for a farm business is fairly bleak. What the Gormans have helped motivate us is that you have to be creative. None of us are against reasonable regulations and want what is best for the Town, what we're seeing tonight is that there needs to be a discussion going on between the official side and the community and find out what that is. We (Full Circle Farm) want to meet our expectations that were set forth in the proposal. The second point was something about Happy Acres Farm triggering this type of Regulations. Ms. MacLean stated that they are allowed a farm stand that is allowed to sell 51% of farm grown goods, she was proud to state they are selling 91% farm grown goods. There is a lot of flexibility already built into the regulations as they exist. She stated she feels it scares people when there are too many regulations and discourages them from even trying. The third thing is she feels they are the only business in town that has been required to apply for a Special Permit. They are happy with the Special Permit application and requests there is more over site of the process. Ms. MacLean stated she feels there is a reasonable route and asks the Commission to consider less micromanaging for small businesses. Additionally she stated she feels more comfortable with the Town voters deciding and not through unilateral Regulations. Tara Alamany spoke next, stating she agrees with much that has been said tonight. She is an employee and family of the Gormans. She agrees with minimal regulations with small businesses. An important thing she

hopes to come out of this evening is an understanding of what this winery and this family means to this community. The Gormans are supportive of the businesses in this community and non profits in town. People come from all over the country come to visit White Silo, and over regulating small business in Town has a greater impact on the community than can be imagined. Chair Burruano thanked all of those who took the time to attend this meeting and speak. She assured that everything that has been said will be taken into consideration in the future. Chair Burruano stated 47 letters have been received expressing opposition in regard to the proposed Winery Regulation, and read into record the names and reasons of opposition. Chair Burruano asked if anyone wished to speak who did not sign up. No one came forward. Chair Burruano asked if any Commission members had additional comments or questions. The Commission requested clarity in regard to the disagreement regarding "grandfathering". Atty. Slater stated they are in full agreement, and referred to what Atty. Branse's letter said, " if it were a legal non conforming use, this regulation wouldn't apply to it", that is just a statement of the law, and agrees with it entirely, but that could have been read by someone that suggested White Silo wouldn't be subject to Regulation at all. Atty. Slater stated his position is as Atty. Branse stated previously and what they agreed on is because of the nature of this use, because of the way it is developed in wineries that is why Towns have adopted winery Regulations, because in his view, the things that are so essential to a winery's survival are not specifically permitted in the Regulation. Atty. Slater suggested they could disagree whether the activities are customary or incidental to a farm but thinks most communities go the safer route and that is to say it in the Regulation what is permitted. Atty. Slater stated "we are in agreement that the best practice to continue to preserve and allow a farm or farm winery to thrive is to adopt reasonable Regulations. Chair Burruano asked the Commission if they have received sufficient information to Close the Public Hearing. Atty. M. Branse stated as a procedural matter, due to the abundant feedback from the Public and Atty. Slater, further review and revisions will be necessary resulting as significant changes to the Proposed Regulation as it has been written. A new Public Hearing will be necessary once the changes have been drafted, and again receive feedback from the Public.

Commissioner N. Volkmar Moved to Close the Public Hearing regarding Proposed Changes to the Zoning Regulations, New Section: 352 A Farm Winery.
Seconded by: J. Finch **Vote: For: Unanimous**

Old Business:

Deliberation of Public Hearing regarding Proposed Changes to the Zoning Regulations, New Section: 352 A Farm Winery.

The Commission agreed that there were significant enough changes to the proposed Regulation that it would be necessary to bring this Regulation back into review and apply revisions. This revision will be brought to a Public Hearing in the near future.

Commissioner N. Volkmar Moved to Approve the Proposed Changes to the Zoning Regulations, New Section: 352 A Farm Winery as warned.
Seconded by: J. Finch **Vote: For: 0 / Against: 7**

The Commission took a brief recess at 9:00 pm.

The Commission reconvened the Meeting at 9:15 pm.

New Business:

3 Fox Run Road- John DePhillips & Susan Porkone (M- 18, L- 39) Application for a Special Permit to allow an 1,180 sq. ft. Accessory Dwelling within an existing structure in accordance with Section 324.1A

Chair J. Burruano reviewed the application file. The 1,180 square foot Accessory Dwelling is proposed to be constructed within an existing structure. In the file was a letter designating Stephen Looney of STL Construction to act on behalf of the owners. The file also contained a parking plan for 2 spaces, a floor plan and building plans. A new septic system will be installed. The Commission set a site walk to view the accessory structure on Saturday November 12, 2016 at 10:00 am at the property location.

Commissioner N. Volkmar Moved to accept the Application for a Special Permit to allow an 1,180 sq. ft. Accessory Dwelling within an existing structure in accordance with Section 324.1A located at 3 Fox Run Road- John DePhillips & Susan Porkone (M- 18, L- 39) and set for a Public Hearing to take place on December 1, 2016 beginning at 7:00 pm.
Seconded by: J. Finch Vote: For: Unanimous

Approval of Minutes:

Regular Monthly Meeting of October 6, 2016

Mid- Month Meeting/ Workshop of October 20, 2016

Commissioner T. Hollander Moved to Approve the Minutes of Regular Monthly Meeting of October 6, 2016 and the Minutes of Mid- Month Meeting/ Workshop of October 20, 2016 as written.
Seconded by: N. Volkmar Vote: For: Unanimous

Correspondence: None

Zoning Enforcement Officer: Tabled until the December 1, 2016 meeting.

Public Comment: None

Committee Reports: None

Chairman Report:None

Adjournment:

Selectman N. Volkmar Moved to Adjourn the Meeting at 9:20 pm.

Respectfully submitted by:



Christine Branson, Commission Clerk

November 10, 2016

APPROVED AS AMENDED AT THE DECEMBER 1, 2016 RMM