



RECEIVED

By Darlene Brady at 1:17 pm, Apr 17, 2023

Kent Conservation Commission
Regular Meeting - Wednesday, April 19, 2023 @7:00pm
Kent Town Hall
Agenda

Hybrid Link: <https://us02web.zoom.us/j/81034848724?pwd=KzhiTXk2Z1ovd1BpTWVtS1BaYnpRdz09>
Meeting ID: 810 3484 8724 Passcode: 659214

1. Call to order
2. Accept/Amend Agenda
3. Accept/Amend Minutes March 8, 2023
4. Treasurer's Report
5. Public comment
6. Old Business

Discussion items

- A. Town Clean-up
- B. KCS Arbor Day Celebration
- C. Right to Farm Ordinance
- D. POCD - Planning & Zoning Regulations Updates; Chapter reviews
- E. Sustainable Materials Management in Kent – PAYT and organics recycling

Updates (as needed):

- A. Spring Break Library Program
- B. Kent Municipal Open Space Acquisition
- C. Housatonic Herbicide Working Group HHWG - Letter to BOS & press release
- D. Green Energy Task Force
- E. Sustainable CT
- F. Legislative Watch list:
 - SB 73 Requiring Local Representation on Siting Council (JF, Senate Calendar Number 57)
 - SB 896 DEEP and Tree Removal in State Parks (JF, Senate Calendar Number 118)
 - SB 962 The Use of Certain Rodenticides (Referred by Senate to Committee on Judiciary)
 - SB 963 Neonicotinoids for Non-Agricultural Use (Senate Calendar Number 167)
 - HB 5278 - Increasing List of Invasive Plants Prohibited from Sale in CT (hasn't moved since Jan)
 - HB 5400 The Preservation of Stone Walls in the State (Referred by House to Committee on Judiciary)
 - HB 5608 Certain Photovoltaic Facilities on Prime Farmland, Farmland of State-wide Importance or Core Forests (JF, House Calendar Number 97)
 - HB 6397 Zero Carbon Emissions (Referred by House to Committee on Government Administration and Elections)
 - HB 6481 Prohibiting Release of Certain Balloons (JF, House Calendar Number 47)
 - HB 6482 Raising the Bonding Limit to 25K for Greenways Bikeways/Rec Trails (JF, House Calendar Number 48)
 - HB 6483 Enabling Bonding for State Open Space (OSWA) - 10M (House Calendar Number 49)
 - HB 6485 Authorizing Green Burial Companies to Receive Open Space Funds (JF, House Calendar Number 50)
 - HB 6486 EPR for Tires (JF, House Calendar Number 325)
 - HB 6606 The Use of Certain Products Made From Polystyrene (Tabled for the Calendar, House)
 - HB 6607 Nighttime Lighting of Syate-Owens Buildings at Certain Times for the Protection of Birds (JF, House Calendar Number 125)
 - HB 6608 The Distribution of Single Use Plastic Straws by Certain Restaurants (House Calendar Number 104)
 - HB 6610 "No Net Loss" of State Forest Lands (no action by Env)
 - HB 6744 Compensatory Reforestation Plans

7. Correspondence
8. Adjourn

RECEIVED

By Darlene Brady at 9:01 am, Mar 15, 2023



TOWN OF KENT

Conservation Commission
Regular Meeting Minutes
Wednesday, March 8, 2023 @ 7:00pm

In attendance:
Melissa Cherniske
Carol Franken
Connie Manes
Wendy Murphy
Jos Spelbos
First Selectman Jean Speck

Members of the Public Attending:
Melissa Braislin
William Braislin

Call to order

A quorum being present, Commission Chair Connie Manes called the meeting to order at 7:03 pm.

1. Accept/Amend Agenda. The Commissioners agreed to revise the order of agenda item 5, discussing the Right To Farm Ordinance first (5E) by switching it with the Land Acquisition Fund (5A). *Upon a motion by Melissa Cherniske seconded by Carol Franken, the Commissioners voted unanimously to accept the agenda as amended.*
2. Accept/amend minutes of Regular Meeting February 8, 2023. *Upon a motion by Melissa seconded by Carol, the minutes of the February 8, 2023 Regular Meeting were unanimously approved.*
3. Treasurer's Report. Treasurer Liddy Baker was not present for the meeting however she emailed her report prior to the meeting and the Commission took note of the following: There has been one expense of \$15 since our last meeting leaving the balance of our budget at \$2,225.87. The KCS tree pruning discussed at the last meeting was completed and \$75 paid from the Kuga Funds designated for tree maintenance, leaving a balance of \$11,540.84.

Liddy reported that 10 trails books remain from our last printing. The Commission felt this may constitute low inventory given the coming change of season when more people are likely to be out hiking. *Upon Connie's motion seconded by Melissa the Commission voted to advise Liddy to order more books as she believes appropriate. **Connie will email her to advise.***

4. Public Comment. Melissa and William Braislin made comments during the Commission's discussion of the Right To Farm Ordinance.
5. Old Business.
Discussion items
 - A. Right To Farm Ordinance.
Kent's Zoning Regulations define what is considered as Agriculture and Farming, at 2200 attached hereto for reference.

These are draft minutes. Corrections may be made by the Committee at a subsequent meeting. Please refer to subsequent meeting minutes for possible corrections and approval of these minutes.

In 2015 the Commission was asked by the Planning and Zoning Commission, in conjunction with a review and revision of zoning regulations, to draft and bring to the townspeople a Right To Farm Ordinance, as recommended in Kent's POCD and regionally by the Northwest Hills Council of Governments. The Ordinance was adopted at public meeting on May 15, 2015 and became effective on June 3, 2015. A copy is attached and incorporated herein, as is a handout prepared by the Commission for consideration within that meeting.

The Ordinance articulates the Town's policy to "conserve and protect agricultural land and to encourage agricultural operations and the sale of local farm products within the Town...by limiting circumstances under which any such operation may be considered a nuisance". The Ordinance provides that "[i]n the event a dispute arises between an agricultural operator and a resident in the Town of Kent as to whether a particular agricultural operation constitutes a nuisance, either interested party may submit a written request to the Selectmen for an advisory opinion or to mediate the dispute."

On February 11, 2023 Melissa and William Braislin submitted a complaint to the Board of Selectmen about the activities of their neighbor, Brent Kallstrom, operating as 5 Kent Hollow 5, LLC. Acknowledging that Brent is a farmer and expressing their support for farming in Kent, the Braislins articulated complaints regarding the sightliness of Brent's property adjoining the Braislins' home at 113 Upper Kent Hollow Road, as well as noise from Brent's use of an excavator during the day and dinnertime hours. The letter requested that the Selectmen "look into the compliance with the right to farm ordinance and zoning."

Following receipt of the complaint, First Selectman Jean Speck asked Land Use Administrator Tai Kern to consider the complaint with respect to Kent's zoning regulations. Tai made a site visit and investigation, summarized in her report to the First Selectman of February 17, 2023. Tai found that two storage containers on Brent's property may be in violation of regulations governing permissible setback distances, but that otherwise the activities mentioned in the Braislins' letter appear to be consistent with zoning. Tai stated her belief that the property qualifies as a farm due to its acknowledgment by both the local assessor and NRCS through USDA and the long-standing history of farming on site.

The Commission discussed the intent of the Right To Farm Ordinance to broadly protect farming and farm activities. It was the express recommendation of the Commission, in which we were joined by the Planning and Zoning Commission, to use the State of Connecticut's definition of agriculture (a choice consistent with the Planning and Zoning Commission's in updating its regulations contemporaneous with the Ordinance), to avoid subjective interpretations seeking to separate and disqualify certain activities. Related correspondence with the Planning and Zoning Commission is attached hereto for reference.

In light of the foregoing, the Commission believes that the activities cited within the Braislin's complaint, specifically storage of farm materials and equipment and operation of machinery used for farming are protected by the Right To Farm Ordinance, subject to any applicable setback regulations. First Selectman Jean Speck took note of the discussion.

- B. POCD. Jos reported that the Planning and Zoning Commission has drafted revised Subdivision Regulations for consideration at a Special Meeting on Thursday, March 16th. Jos believes confusion could result from the P&Z's decision to issue the new Regulations separately from the Conservation Subdivision regulations (located in the Zoning Regulations) without making note within the Subdivision Regulations of the existence of Conservation Subdivision Regulations. Because the P&Z has expressed a preference for the use of Conservation Subdivision Regulations it would be helpful to alert developers

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that they should consult the Conservation Subdivision Regulations first and use them in conjunction with the traditional Subdivision Regulations. Jos also called the Commission's attention to current discussion within the P&Z about the percentage set-aside required by the Conservation Subdivision Regulations within the rural district as opposed to the Village Center, and whether additional set-aside can be required by the P&Z.

The Commission did not address the pending question of need for trees along village streets.

- C. Sustainable Materials Management in Kent. Jean reported that Kent continues to await HRRA's grant award providing for implementation of Pay-As-You-Throw (PAYT) aka Unit-Based Pricing, which will include organics collection/diversion. When the grant becomes available there will be a need for communications and education within the Kent community. Melissa noted that the Town of Wilton has started a food scrap recycling program.
 - D. Housatonic Herbicide Working Group. The Commission discussed the draft letter to the Housatonic Railroad in support of HHWG. Kent's Board of Selectmen and Inland Wetlands Commission are also sending letters in support. *Upon the motion of Melissa seconded by Wendy, the Commissioners unanimously voted to send the letter as drafted. Connie will forward the letter to Bruce Bennett for his submission to the Railroad.*
 - E. Kent Municipal Open Space Acquisition. Connie attended the Board of Selectmen's meeting on February 22nd to present information about prior work by Kent leaders to establish a Land Acquisition fund. She will attend the next Regular Meeting on March 21st to present information about other Connecticut towns with Land Acquisition Funds and/or mechanisms for funding and protecting open space.
5. Old Business
- Updates (as needed):*
- F. Green Energy Task Force. Wendy discovered a program called "Smart Buildings" sponsored by UCONN. The program providers put Kent at the top of their list, and will produce a study showing how Kent's municipal buildings compare to similar buildings in other towns with respect to energy use. The report will enable Kent to access free energy audits for its municipal buildings. Wendy had a very positive conversation with staff at the Northwest Hills Council of Governments about hiring a staff person who could serve all COG towns in the areas of energy conservation and renewable energy infrastructure.
 - G. Sustainable CT. No update
6. New Business.
- Reference dates: April 5th Thurs first night of Passover, April 7-14 KCS Spring Break, April 9 Easter, KCC Mtg April 19 (3rd not 2nd Wed.), April 22 Saturday Earth Day, April 28 Arbor Day
- A. Town Clean Up. Liddy Baker has coordinated this terrific Commission event for many years (with our immense gratitude!) and **this year the remaining Commissioners will chip in together** to relieve her of this responsibility. The Town Clean Up will run from Friday, April 7th to Sunday, April 23rd. The tentative date for the Scouts' Village Clean up is Friday, April 7th. The date for the final celebration at the Transfer Station will be on Sunday, April 23rd from 9-noonish.

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Tasks for the event include:

- Get lists of participants from Liddy **Connie**
- Get details on #bags and gloves needed from Liddy **Connie**
- Contact Chamber of Commerce for partnership re: bags **Connie**
- Order bags and gloves **Connie**
- Email volunteers
- Maintain list of committed volunteers and road map
- Distribute bags
- Arrange for PR including flyer, social media posts, Town newsletter, sandwich boards
- Coordinate incoming phone calls **Darlene?**
- Coordinate with Scouts for Village Clean Up Day **Melissa**
- Coordinate with South Kent School, Marvelwood School, Kent School
- Coordinate Transfer Station Celebration
- Order Costco cakes for South Kent School (3), Scouts (1), other schools as needed **Wendy**

- B.** Library Program. Carol has arranged for the Children's Program on Thursday, April 13th at 10:30am. This is during the Kent Center School Spring Break. The program will focus on solar energy production. Carol has sourced two children's books to add to the Library's collection – one board book for toddlers, one at the 4th grade reading level. The program will include read-aloud storytime, a sample solar panel, display boards, and take-home coloring book for each child participating. **Carol asks Commissioners to attend and support the program, and to bring along for show-and-tell small things that operate with solar panels such as phone battery chargers, lights, etc.**
- C.** Arbor Day. Jos has been working with the KCS Arbor Day committee. The annual Arbor Day celebration will be on Friday, April 28th at approx. 2pm. The committee chose a location on Bridge Street in front of the Frontier storefront. They chose a Scarlet Oak for planting. Bruce Bennett will source the tree and arrange for preparation of the site. Jos asked Chris Rose to coordinate involving students in preparing the site as well as in helping to plant the summersweet shrubs at the Outdoor Classroom. Jos will help with that planting. **Commissioners are asked to attend and support the students in this annual observance.**
- D.** Legislative Watch list. An Environment Committee Hearing is scheduled for Friday, March 10th. Among raised bills that may be interesting to watch include SB1146 which concerns various DEEP programs and proposes to formally release DEEP from its responsibility to help interpret air quality monitoring results from Northwest Connecticut in connection with the Cricket Valley Energy Plant; and HB6814 which seeks to establish a standard coding system to be used by producers for recyclable products.

7. Correspondence. None.

8. Adjourn. There being no further business before the Commission the meeting adjourned at 9:05 pm.

NEXT MEETING: Wednesday April 19th @ 7:00pm (note this is the 3rd Wednesday, not second)

Respectfully submitted by: Connie Manes, Chair

These are draft minutes. Corrections may be made by the Committee at a subsequent meeting. Please refer to subsequent meeting minutes for possible corrections and approval of these minutes.

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Agriculture-Related Terms

AGRICULTURE – As adapted from CGS Section 1-1(q), as may be amended:

- Cultivation of the soil, dairying, forestry, raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, including horses, bees, poultry and wildlife, and the raising or harvesting of oysters, clams, mussels, other molluscan shellfish or fish;
- the operation, management, conservation, improvement or maintenance of a farm and its buildings, tools and equipment, or salvaging timber or cleared land of brush or other debris left by a storm, as an incident to such farming operations;
- the production or harvesting of maple syrup or maple sugar, or any agricultural commodity, including lumber, as an incident to ordinary farming operations or the harvesting of mushrooms, the hatching of poultry, or the construction, operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for farming purposes;
- handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market, or to a carrier for transportation to market, or for direct sale any agricultural or horticultural commodity as an incident to ordinary farming operations, or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market or for direct sale.
See "Farm".

AQUACULTURE - The farming of the waters of the state and the production of protein food, including fish, oysters, clams, mussels and other molluscan shellfish, on leased, franchised and public underwater farm lands.

FARM - Land used primarily for agricultural activities including:

- agriculture, nurseries, orchards, ranges, forestry, nursery or truck gardening, or for raising or keeping of livestock and fowl but excluding the raising of animals for laboratory use or for their fur,
- farm buildings and accessory buildings thereto including barns, silos, greenhouses, hoop-houses and other temporary structures or other structures, and
- as an incident to ordinary farming operations, the sale of agricultural or horticultural commodities.
See also "Agriculture".

FARMING - *See "Agriculture".*

FARM BREWERY - The small scale production of malt beverages from the fermentation of malt with or without cereal grains or fermentable sugars or hops, provided that at least 20% by weight of said hops, cereal grains and other ingredients, excluding water, are grown by the farmer-brewer on-site or sourced within a 50 mile radius.

NURSERY - Land, which may include greenhouses, devoted to the commercial raising and sale of trees, plants, flowers or shrubs.

TRUCK GARDENING - Land devoted to the commercial raising of produce, which may include greenhouses.

Chapter 6 CONSERVATION COMMISSION

Sec. 5-1. Conservation Commission

1. Pursuant to the provisions of Section 7-131a of the General Statutes, the Town of Kent establishes a Conservation Commission which shall have all of the powers and duties set forth in said general statutes for the development, conservation, supervision and regulation of natural resources, within the Town.

2. The Conservation Commission shall consist of five (5) members, all of whom shall be electors of the Town of Kent. Thereafter, members shall be appointed for terms of three (3) years, each commencing on the first Monday of December in each year. Members shall continue to serve until their successors have been appointed and qualified.

3. There shall be two (2) alternate members to the Conservation Commission, all of whom shall be electors of the Town of Kent. The alternate members shall be appointed for a term of one (1) year each commencing on the first Monday of December in each year. The alternate members shall continue to serve until his or her successor has been appointed and qualified. When seated, the alternate members to the Conservation Commission shall have all of the powers and duties conferred upon regular members.

4. The Commission shall elect officers in the month of January in each for a three-year term at a meeting of the Commission duly warned and noticed. Said officers shall consist of a Chairman, Vice-chairman, Secretary and any other officers which the commission may deem necessary or appropriate. A special election, duly noticed, may be held to replace any officer who has resigned or is otherwise unable to serve for the balance of the unexpired term of said officer.

5. The First Selectman shall appoint the members and the alternate member to the Conservation Commission and shall, by appointment, fill the remaining term of any member or alternate member who vacates, resigns or leaves office. The First Selectman may remove any member or alternate member for cause as provided by Section 7-131a(a) of the General Statutes.

History: Conservation Commission created by special town meeting June 20, 1974; rescinded Nov. 6, 1981; combined with Inland Wetlands Commission at special town meeting June 24, 1988, effective July 15, 1988; repealed and separated at vote February 5, 1999, revision adopted November 2, 2001, effective December 1, 2001.

Sec. 5-2. Right to Farm

1. Purpose and Intent. Agriculture is a significant part of the Town of Kent's heritage, its rural character, and may constitute a vital part of the Town's future. It is therefore the declared policy of the Town of Kent and legislative determination of the Kent Board of Selectmen to conserve and protect agricultural land and to encourage agricultural operations and the sale of local farm products within the Town. It is the purpose and intent of this ordinance to promote and advance the Town's policy and reduce the loss of local agricultural resources by limiting circumstances under which any such operation may be considered a nuisance. It is hereby further legislatively determined that whatever impact may be caused to others through normal agricultural practices, such impact is offset and ameliorated by the benefits of farming to the neighborhood, community, and society in general. Methods of farming that comport with generally accepted farming practices are also deemed to comport with community standards at large. This ordinance is not to be construed as modifying or abridging state law relative to the abatement of nuisances, but is to be used in the interpretation and characterization of activities and in considering and implementing enforcement of the provisions of the Ordinances of the Town of

Kent and other applicable Town regulations, consistent with the provisions of Connecticut General Statutes § 19a341. Additionally, the terms of this ordinance may be used in determining whether the methods and practices that may come under review conform to community standards.

2. Declaration. No present or future agricultural operations conducted or maintained in a manner consistent with accepted customs and standards of the agricultural industry, on a recognized farm which is engaged in the act of farming as defined in this ordinance, shall become or be considered a nuisance solely because such activity resulted or results in any changed condition of the use of adjacent land. Agricultural operations may occur on holidays, weekends and weekdays by night or day, provided such activities do not violate applicable health, safety, fire, life safety or building codes and regulations. It is herein understood that such practices may include without limitation:

- (a) The incidental noise from livestock or farm equipment;
- (b) Odors from livestock, manure, fertilizer, compost, agricultural end-products, or feed;
- (c) Dust and fumes created during plowing or cultivation operations;
- (d) The use of agricultural chemicals, pesticides and fertilizers including manure, provided such chemicals and the method of their application conform to practices approved by the Commissioner of the Department of Energy and Environmental Protection, or, where applicable, Commissioner of Health Services; and
- (e) Irrigation and water management associated with normally accepted farming practices.

These provisions shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation.

3. Definitions. “Agriculture” means cultivation of the soil, dairying, forestry, raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, including horses, bees, poultry, fur bearing animals and wildlife, and the raising or harvesting of oysters, clams, mussels, other molluscan shellfish or fish; the operation, management, conservation, improvement or maintenance of a farm and its buildings, tools and equipment, or salvaging timber or cleared land of brush or other debris left by a storm, as an incident to such farming operations; the production or harvesting of maple syrup or maple sugar, or any agricultural commodity, including lumber, as an incident to ordinary farming operations or the harvesting of mushrooms, the hatching of poultry, or the construction, operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for farming purposes; handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market, or to a carrier for transportation to market, or for direct sale any agricultural or horticultural commodity as an incident to ordinary farming operations, or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market or for direct sale.

“Agricultural Operations” means activities relating to agricultural use including, but not limited to, the cultivation and tillage of soil, the burning, processing, or composting of agricultural waste products or other agricultural burning, processing or composting, provided that such composting activity shall not be the sole or primary agricultural operation, protection of crops and livestock from insects, diseases, birds, predators or other pests from damaging or potentially damaging crops, the proper and lawful use of agricultural chemicals including but not limited to the application of pesticides and fertilizers, or the raising, production, irrigation, pruning, harvesting, or processing of an agricultural commodity, including any type of crop or livestock, and any forestry improvements and timber harvesting and processing. Such operations also include the operation and transportation of farm equipment over roads within the Town and conducting agriculture-related educational and farm-based recreational activities, including agri-tourism, provided the activities are related to marketing the agricultural output or services of the farm and local produce and livestock products and provided same do not conflict with any provisions of the zoning regulations. For purposes of this ordinance, such operations do not include the slaughtering of animals not raised on the premises where they are to be slaughtered.

“Farm” means land used primarily for agricultural activities including: agriculture, nurseries, orchards, ranges, forestry, nursery or truck gardening, or for raising or keeping of livestock and fowl but excluding the raising of animals for laboratory use or for their fur, farm buildings and accessory buildings thereto including barns, silos, greenhouses, hoop houses and other temporary structures or other structures, and as an incident to ordinary farming operations, the sale of agricultural or horticultural commodities.

“Locally” for the purposes of this ordinance shall mean all Connecticut counties as well as Dutchess, Columbia and Putnam Counties in New York; and Berkshire County in Massachusetts.

4. **Dispute Resolution and Advisory Opinions.** An interested person may submit a written request to the First Selectman’s office for an opinion as to whether a particular agricultural operation constitutes a nuisance or is an activity that is incidental to normal and customary farming activity and comports with community standards. In the event a dispute arises between an agricultural operator and a resident in the Town of Kent as to whether a particular agricultural operation constitutes a nuisance, either interested party may submit a written request to the Selectmen for an advisory opinion or to mediate the dispute. The Selectmen may promulgate such regulations and procedures as it deems necessary for the implementation of this section. Nothing herein shall preclude any party from either appealing said advisory determination to the Superior Court for the Judicial District of Litchfield and/or commencing a direct action in said court to abate the claimed nuisance.

History: Adopted May 1, 2015, effective June 3, 2015.

Right to Farm Facts

The Kent Planning & Zoning Commission, in conjunction with its review and update of the Zoning Regulations, asked the Conservation Commission to develop a Right To Farm Ordinance.

- The Town of Kent has voiced its support for farming within its Plan of Conservation and Development, and within its Zoning Regulations. There are active farmers throughout Kent and surrounding towns raising locally-sold produce, eggs, meats, animal feed and hay.
- Kent's Zoning Regulations are where the Town articulates what activities are and are not within the definition of farming. The P&Z has taken the definition used in the State of Connecticut.
- The State of Connecticut has both a definition of what constitutes Farming (used by P&Z), and a Right To Farm Law. In addition to providing its own security for farmers, the State's RTF law enables municipalities to enact their own Right to Farm laws locally.
- The name of the law is perhaps misleading – we think it should alternatively be called the **“All-Right to Farm Law”**.
- Right to Farm laws are enacted for the purpose of showing support for sustainable local agriculture, and to provide a sense of psychological security to farmers. Technically, these laws do not provide a “right” to farmers – they neither expand nor constrict the activities farmers can do, as articulated in state and municipal definitions of “farming”.
- The ordinance can be characterized as an “anti-nuisance” law – it protects farmers from lawsuits claiming that allowable farming activities are a nuisance, such as those based on noise, early morning activities and odors associated with normal farming. It does not protect farmers from nuisances caused by negligence, or willful or reckless misconduct.
- Within Connecticut, at least 12 towns have enacted Right to Farm laws, including the towns of New Milford and Torrington.

MEMORANDUM

To: Kent Planning and Zoning Commission

From: Kent Conservation Commission

Date: April 9, 2015

Re: Draft Right To Farm Ordinance

At the direction of the Kent Planning and Zoning Commission, the Kent Conservation Commission undertook to develop, over the course of the first quarter of 2015, a Right To Farm Ordinance to accompany the Zoning Regulations currently under review for the Town of Kent.

In so doing, the Conservation Commission reviewed relevant background on Right To Farm legislation nationally, at the state level in Connecticut, and locally within Connecticut. We reviewed and modeled our draft ordinance on legislation enacted in the towns of New Milford, Torrington, North Stonington, and Woodstock. This memorandum serves to accompany the draft and explain some of the Conservation Commission's determinations in drafting, and to respond to questions raised by Town Attorney Randy DiBella in an email dated April 7, 2015.

Purpose of Right To Farm Ordinances

The Connecticut Department of Agriculture confirms that "Zoning and subdivision regulations are the main regulatory tools a municipality may use to regulate and define agriculture." Supplemental to this it recommends as a non-regulatory approach that municipalities committed to making their communities more farm-friendly "Establish a right-to-farm ordinance to reaffirm your community's commitment to agriculture." Right to Farm laws protect farmers from people who might otherwise sue them for private nuisance and can help protect farmers from anti-nuisance ordinances and unreasonable controls on farming operations.

The draft ordinance does not supplant, supercede, or expand upon existing local, state and federal law governing farmers' use of land. It also does not, as stated within the draft, modify or abridge state law relative to the abatement of nuisances.

What it does is state the policy of the Town to support agriculture by qualifying what cannot be considered a nuisance. The ordinance does not protect against activities deemed to be nuisances due to the farmers' negligence or willful or reckless misconduct.

Definition of Agriculture

It is the advice of the CT DOAG that municipalities "adopt the State's definition of agriculture in your zoning regulations. Limiting the definition of agriculture town-by-town limits agriculture in our State and leads to conflicts as many farmers own land in more than one community."

In drafting the Right To Farm ordinance, the Conservation Commission purposely incorporated verbatim the definition of agriculture chosen for the draft Zoning Regulations under consideration by the Planning & Zoning Commission (see draft December 2014, Section 2.200). This definition is the State's definition, found within CGS Section 1-1q.

Mr. DiBella opines that using the State of Connecticut's definition of agriculture may be so broad as to invite dispute about activities that "are farm related but not farming." To the contrary, by clarifying that farming is farming, the broad definition avoids subjective interpretations seeking to separate and disqualify certain activities.

Broad vs. Narrowly Conscripted Characterization of Farming

As expressed by Connecticut's Commissioner of Agriculture, "Agriculture changes with time, as do all businesses." The intent of our ordinance is to encourage continued active agricultural activity within the Town of Kent, and reduce loss of agricultural resources by limiting circumstances under which farming may be considered a nuisance.

The draft ordinance contains the broad characterizations of "normal farming practices", "normal and customary farming activity" and "accepted customs and standards of the agricultural industry, on a recognized farm which is engaged in the act of farming as defined in this ordinance". These terms are among those commonly used within municipal and the State ordinance.

We carefully considered, and rejected, narrowing the delineation of farming to those practices "standard to Litchfield County" only, in order to avoid excluding from protection farming practices inconsistent with subjective interpretations of farming, practices which are new and innovative to our area, or practices which are currently more common in places outside of Litchfield County.

We believe the ordinance should remain broad with respect to its support of farming practices, and leave the regulation of such practices within existing structures of local, state and federal law.

We would not wish to deter new farm businesses from choosing Kent merely because that specific type of farm has not operated in Litchfield County before, or may strike some as unusual. Paradoxically, narrowing the ordinance in this way creates *an unnecessarily broad exclusion* of interests we seek to encourage and protect.

Farming Practices

Mr. DiBella's suggestions regarding the further circumscription of what may be considered farming, by limiting protections to activities which are practiced within Litchfield County are also points we considered and purposely rejected during our drafting process. Our intent was to create an instrument supportive of farming as defined, rather than farming as seen through the eyes of neighbors who as suggested by Mr. DiBella may dislike the smell of manure and/or are irritated by noise.

Contrary to Mr. DiBella's implication, this language is more likely to avoid rather than invite litigation, by avoiding the implication that farming practices in Litchfield County are vastly different from farming practices just over its borders, elsewhere in the region, or subject to popular interpretations regarding acceptable versus non-acceptable activities. And we reject the notion that litigants are any less likely to hire experts if a stricter standard is used, but do believe that litigation on the whole is less likely if neighbors are not afforded the opportunity to use untested, arguably subjective, and not commonly understood terminology which differs from that of the state.

In stating that this ordinance issues "a blanket imprimatur on all claimed farm activity," Mr. DiBella misconstrues the purpose of Right To Farm laws generally. The ordinance affords to farmers no rights to engage in activities they would otherwise be unable to do under relevant local, state and federal land use law. Farming will continue to be regulated, permitted and delimited by zoning regulations, and state and federal use laws. The ordinance acts as a disincentive to nuisance suits filed against farmers for conducting lawful activity.

Local Products

As stated within the Purpose and Intent section, we believe that it is the intention of the Planning and Zoning Commission to "encourage agricultural operations and the sale of local farm products within the Town." Mr. DiBella opines that the ordinance as written "appears to protect the warehousing, sale and display of crops and produce that are not necessarily local."

The Commission discussed the meaning of "local", and whether and how to define that word in order to eliminate confusion and/or dispute about its meaning. Finding no commonly understood definition among regulatory agencies or within the industry, and after deliberation, we recommend that a definition including all of Connecticut; Dutchess, Columbia and Putnam Counties in New York; and Berkshire County in Massachusetts most accurately reflects a policy of encouraging local farming and the reality of evolving consumer purchase patterns for agricultural products by Kent residents and its visitors.

We take notice of Mr. DiBella's example of the New Milford composting facility, and his efforts to address concerns that off-farm products might be brought to the farm for processing. The New Milford ordinance defines "locally" to include all of Connecticut, and Putnam and Dutchess Counties in New York.

Suggestion regarding correct wording of adopting body

Attorney DiBella's observation that the wording within the "Purpose and Intent" section of the draft incorrectly represents that the ordinance would be the "legislative determination of the Kent Board of Selectman" is correct, and we agree that the draft should be amended to reflect the "legislative determination of the legislative body of Kent."

Attachments and Resources

Connecticut Department of Agriculture, [A Guide for Municipalities](#), October 2014: http://www.ct.gov/doag/lib/doag/marketing_files/2015/doag_municipalities_guide.pdf (and submitted as attachment)

Memorandum titled “Right-to-Farm Ordinances” by Kristen L. Miller, Legislative Analyst, submitted January 31, 2011 to the Connecticut General Assembly:

<http://cga.ct.gov/2011/rpt/2011-R-0058.htm>

Tool kit for Connecticut Farmers, published 2014 by the Connecticut Farm Bureau Association regarding Connecticut’s Right to Farm law:

http://www.cfba.org/images/resources/right_to_farm.pdf (and submitted as attachment)

Planning for Agriculture: A Guide For Connecticut Municipalities, published online as a joint project of the Connecticut Conference of Municipalities and American Farmland Trust, and including a list of Connecticut towns with municipal Right To Farm laws, and links to some laws:

<http://ctplanningforagriculture.com/right-to-farm.php>

HOUSATONIC RIVER WORKING GROUP

March 30, 2023

To: Pete Bass, Mayor New Milford; Jean Speck, First Selectperson Kent; Gordon Ridgway, First Selectman Cornwall; Henry Todd, First Selectman Canaan/Falls Village; Charles Perotti, First Selectman North Canaan

The Housatonic Herbicide Working Group is pleased to be able to update you concerning our recent activities. In the interest of time, we will be brief:

1. We have received support from all of you in embracing the concept of trying to minimize the use of herbicides in the railroad railbed and right-of-way. Our purpose is to protect the aquatic ecosystems of the Housatonic River the health of residents whose wells are near the railroad. We want to ensure that towns receive timely notification of when spraying is to commence, that the names and planned concentrations of the herbicides that will be used are specified ahead of time, and that the towns affected by the railroad's spraying have a chance to delineate "no-spray zones" and "sensitive areas", as is required in the state of Massachusetts. We are asking the railroad not to use herbicides labelled as hazardous to water bodies by the EPA. We also want to ask our state representatives to pursue amendments to the Connecticut vegetation management regulations to bring them closer to the best practices we have found in Massachusetts.
2. We have met with and received letters of support from the Conservation Commissions and Inland Wetlands Commissions of the following towns: Cornwall (Conservation Commission), Kent (Conservation Commission, Inland Wetlands Commission), Falls Village/Canaan (formal endorsement of support by the Inland Wetlands/Conservation Commission in their minutes of 2/23/2023).
3. We have met with the Housatonic River Commission and received their written support and have received verbal support from Lynn Werner of the HVA and the Northwest Conservation District.
4. We have reached out to both the Housatonic Railroad Company as a mediator and to State Representative Maria Horn concerning our research and our activities. We have been informed by Cornwall's First Selectman, Gordon Ridgeway, that State Representative Horn is planning on calling a meeting sometime in April to address ongoing concerns about herbicide use. We would welcome any opportunity to provide you with more detailed information prior to such a meeting and are attaching a detailed information packet to this e-mail.

Finally, we are also planning a press release, which you will receive a copy of in the near future.

Respectfully,

Heidi Cunnick, Chair, Cornwall Conservation Commission

Bruce Bennett, Kent Tree Warden

Anna Timell, concerned citizen

Christian Allyn, Selectman, North Canaan

Karen Nelson, Northwest Conservation District

Kent Fletcher, New Milford Inland Wetlands and Watercourses Commission

Ellery Sinclair, Canaan/Falls Village representative to the Housatonic River Commission

Stacie Weiner, Salisbury representative to the Housatonic River Commission

Press Release Draft

The Housatonic Herbicide Working Group prepares for the June Spraying of the Housatonic Railroad's Right of Way

Cornwall CT— The Housatonic Herbicide Working Group (HHWG) announces a push for collaborative dialog with the Housatonic Railroad Company in advance of their planned June herbicide spraying.

HHWG, is a group of local Northwest Corner residents who have banded together in order to encourage the Housatonic Railroad Company to use “ best practices” in their application of herbicides along the railroad right of way (ROW) as it passes through their towns. The group counts among its members an M.D. (Anna Timell), a professional horticulturist and Kent Tree Warden (Bruce Bennett), a PhD environmental scientist (Heidi Cunnick), North Canaan Selectman and professional pesticide applicator (Christian Allyn), members of the Housatonic River Commission (Stacie Wiener and Ellery Sinclair), Cornwall's Land Use Officer (Karen Nelson), and New Milford's Inland Wetlands Representative (Kent Fletcher). The five towns represented are New Milford, Kent, Cornwall, Falls Village/Canaan, and North Canaan. Over the past six months HHWG has met with representatives from the Conservation Commissions, Inland Wetlands, and Board of Selectpersons of the towns through which the railroad runs, to educate them as to the importance of best practices in herbicide spraying in the railroad ROW. Each of the towns have shown support for the effort and have representation on the Working Group. The group also has the support of the has approached the Housatonic River Commission and the Housatonic Valley Association (HVA).

Concerns about the spraying center on environmental and human health impacts. Several of the chemicals currently used by the railroad are known to be mobile and capable of entering surface and groundwater. In addition, there is concern where the railroad is adjacent to the Housatonic River and state identified diversity habitats in which species of concern and/or threatened and endangered species have been known to occur; these riparian river systems are home to a diversity of amphibians and fish, many of which are highly vulnerable to the herbicides sprayed. Sections of the Housatonic River have now been declared as Wild and Scenic and are popular with the fly-fishing community.

The HHWG recommends a two-prong approach to the concern: a short-term approach involving a request to the railroad of 4 clear and relatively costless specific asks: 1. Stop using Method 240, a mobile herbicide with a long half-life that could potentially reach surface and ground water and which carries the following EPA label “This product is classified as having high potential for reaching surface water via runoff for several months after application.”

2. A request that the RR provide clear notification of date and time of spraying
3. A request that the RR respect no-spray zones the towns are developing (with the help of the HHWG overlay maps provided to each town.
4. A request to have clear communication on which and how much of the herbicides they are using as well as the width of the target zone.

The group also recommends a longer term approach to get legislation passed in CT similar to the MA regulations. The HHRC runs through MA towns just north where the railroad abides by legislated practices designed to protect people and the environment. No such similar legislation exists for the state of CT. HHWG hopes to work collaboratively with the Railroad but thus far their calls and emails have not met with a response from the representative to whom the group has been referred, Attorney Ed Rodriguez.