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By Darlene Brady at 9:27 am, Sep 14, 2023



TOWN OF KENT

Conservation Commission

Regular Meeting Minutes

Wednesday, September 13, 2023 @ 7:00pm

In attendance:

Liddy Baker

Melissa Cherniske

Carol Franken

Connie Manes

Wendy Murphy

Jos Spelbos

First Selectman Jean Speck

Members of the Public Attending: Lynn Harrington

Lynn Worthington

Call to order

1. A quorum being present, Commission Chair Connie Manes called the meeting to order at 7:03 pm.
2. Accept Agenda. The agenda was amended to add under 7. New Business item B. Tree Planting, and item C. Regional Recycling Task Force. *Upon a motion by Melissa Cherniske seconded by Liddy Baker, the Commissioners voted unanimously to accept the agenda.*
3. Accept/Amend Minutes Regular Meeting July 12, 2023. The minutes were amended correct the date heading to clarify that the meeting occurred on Wednesday, July 12th, 2023. *Upon the motion of Melissa seconded by Wendy Murphy the Commissioners voted unanimously to accept the minutes with this amendment.*
4. Treasurer's Report. Treasurer Liddy Baker reported that there were no expenses since the last meeting. She confirmed that the Town's adopted budget includes the anticipated expenses presented by the Commission. The balance of the Kuga Fund is now at \$10,647.97 with 65 Trails Guides in inventory. There is \$347 within the arboretum fund.
5. Public Comment. None.
6. Old Business.
Discussion items
 - A. Materials Management in Kent – SAYT / organics recycling. The program is up and running for approximately 6 weeks and has received positive reviews. The Commissioners took note of this positive milestone, many years in the making. While still in its early days, Kent's vendor for organics disposal and composting has removed approximately 1000 lbs/wk. There are not yet numbers to determine whether a corresponding 1000 lbs less of trash has been hauled. The Commission asked First Selectman Jean Speck to provide these metrics when available, also including the cost differential for trash hauling for the town, and information on increased cost efficiency in processing trash using "waste to energy" treatment when organics are removed.

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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Aspects of the program were discussed, including the preferred use of the “orange bags” issued to program participants; anticipation that there will be random audits of trash to assess compliance with trash diversion; where additional compost bags can be obtained; and planned improved signage and communications materials including Spanish-language materials. Jean made a list of items to include in a planned messaging campaign sharing tips and instructions.

Updates

- B. Protection of Farms and Farmers from Nuisance Claims. The Town Attorney forwarded comments in August recommending removal of one paragraph and no other changes. Connie shared her screen with the suggested deletion and attorney’s explanation. The Commissioners agreed with the rationale and *Melissa made a motion to delete the paragraph as recommended and forward the revised ordinance to the Board of Selectmen and the Planning & Zoning Commission for their review prior to a Town Meeting. Wendy seconded the motion and it passed unanimously.*

Jean suggested that the Board of Selectmen could review the proposed revisions at upcoming meetings on either September 22nd or 27th. There are four ordinances that will need to go to a Town Meeting and the Selectmen hope to do this in October. Connie will call Joyce Kearns to request this addition to an upcoming BOS agenda. A copy of the attorney’s markup and clean copy are attached to these minutes.

- C. POCD – Planning & Zoning Regulations Updates; Chapter reviews. No update.
- D. Kent Municipal Open Space Acquisition. Jos Spelbos discussed the Planning & Zoning Commission’s current deliberation on a subdivision application wherein the applicant proposes to use the regulation allowing for a “fee in lieu of open space”. The P&Z has suggested creating a fund to receive the deposit for this fee. The application is on the agenda for the P&Z’s September 14, 2023 meeting. Lynn Worthington commented that there are two state enabling statutes – one for Fee in Lieu of Open Space and one for Land Acquisition Funds and raised the possibility that the town could adopt municipal regulation/ordinances to enable both mechanisms to build a fund.

Jean reported to the Commission that the heirs of Lloyd Albin want to deed the Town fee ownership of the property known as “Albin’s Way” – a short roadway used to provide access from Route 341 to Kenmont. The Town will likely accept this gift and maintain the property as a road access.

- E. Green Energy Task Force. Wendy continues her efforts to have a benchmark study performed for Kent. Meanwhile, she has become aware of an energy assessment program the Town of New Milford used for its municipal buildings and is looking into whether the same program could benefit Kent. Wendy is working to determine if this assessment has been performed on municipal buildings in Kent in the past and Jean discussed two times when energy-saving changes were made in municipal buildings pursuant to energy audits.
- F. Housatonic Herbicide Working Group. No update.
- G. Sustainable CT. No update.
7. New Business.
- A. Reappointment of KCC Members Connie Manes and Carol Franken and Alternate Michael Benjamin. All three of these individuals being willing to continue to serve, *upon a motion by Wendy seconded by Liddy, the Commission unanimously voted to ask the Board of Selectmen to make this reappointment. Connie will advise Joyce Kearns of the vote.*

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- B. Tree Planting. Pursuant to the Commission's earlier discussions, Jos met with Kent's Tree Warden Bruce Bennett. Bruce is working with Rick Osborne to identify trees in the Village that may need to be removed for safety and other reasons (e.g., dead ash and trees irreversibly damaged by spongy moth). Bruce and Jos walked Bridge Street to identify potential tree-planting sites and propose that 1-3 trees should be planted in the area between the gun shop and Kent Wine & Spirit. Jos recommends a Sycamore to be complemented by River Birch and/or Sugar Maples. The Commission supports the planting of native trees only. Jos estimates expenses up to \$1,000 depending on the size of the trees, noting that larger trees are more expensive and require more labor and equipment to plant – he is working with Bruce and Rick to determine the availability of trees and equipment and personnel capacity for planting. Jos will prepare a proposal with costs for three trees for the Commission's review and possible approval.

Jean shared her screen to show a draft "hazard tree evaluation" Bruce Bennett is preparing in alignment with a new state law providing funding for hazard tree removal. Jean also reported that as part of Streetscape Phase II three trees will be removed. The work is tentatively scheduled for next summer. The Commission briefly discussed whether the town could pass a "no net loss of trees" resolution.

Jos said Bruce would agree to join the Commission's November meeting.

- C. Regional Recycling Task Force. Jean asked on behalf of the Task Force whether a volunteer from the Commission is willing to attend the Task Force's monthly meetings. Meetings take place on the second Tuesday of each month at 10:30 am in Brookfield. Currently the Task Force is not offering a hybrid-virtual option. The time commitment is approximately 5 hours/month.
8. Correspondence.
- A. Salisbury Forum Friday, September 22nd – Affordable Housing and Conservation
- B. CACIWC Annual Meeting Saturday, November 11, 2023.
9. Adjourn. *There being no further business before the Commission and upon the motion of Wendy seconded by Liddy the meeting adjourned at 8:57 pm.*

NEXT REGULAR MEETING: Wednesday October 11 @ 7:00pm

Respectfully submitted by: Connie Manes, Chair

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Chapter 6: Conservation Commission

Section 5.2: ~~Right To Farm~~Protection of Farms and Farmers from Nuisance Claims

1 **1. Purpose and Intent.** Agriculture is a significant part of the Town of Kent’s heritage, its rural
2 character, and may constitute a vital part of the Town’s future. It is therefore the declared policy of the Town of
3 Kent and legislative determination of the Kent Board of Selectmen to conserve and protect agricultural land
4 and to
5 encourage agricultural operations and the sale of local farm products within the Town. It is the purpose and
6 intent of this ordinance to promote and advance the Town’s policy and reduce the loss of local agricultural
7 resources by limiting circumstances under which any such operation may be considered a nuisance. It is hereby
8 further legislatively determined that whatever impact may be caused to others through normal agricultural
9 practices, such impact is offset and ameliorated by the benefits of farming to the neighborhood, community, and
10 society in general. Methods of farming that comport with generally accepted farming practices are also deemed
11 to comport with community standards at large. ~~This ordinance is not to be construed as modifying or abridging~~
12 ~~state law relative to the abatement of nuisances, but is to be used in the interpretation and characterization of~~
13 ~~activities and in considering and implementing enforcement of the provisions of the Ordinances of the Town of~~
14 ~~Kent and other applicable Town regulations, consistent with the provisions of Connecticut General Statutes §~~
15 ~~19a-341. Additionally, the terms of this ordinance may be used in determining whether the methods and~~
16 ~~practices that may come under review conform to community standards.~~

17 This ordinance is enacted for the protection of farms and farmers. It is not the purpose of this
18 ordinance to create an avenue for complaints to be made against farmers which could not be made
19 against non-farmers. It is protective, not punitive, in its application. It does not provide a process for
20 and may not be used as an affirmative right to bring nuisance claims or grievances including but not
21 limited to those related to noise, odors, dust or fumes, the storage or use of buildings and equipment.

22 This ordinance aligns with statewide policy codified in Connecticut General Statutes Section 19a-341,
23 as may be from time to time amended. This ordinance is not to be construed as modifying or
24 abridging state law relative to the abatement of nuisances, nor shall it supersede applicable health,
25 safety, fire, life safety or building codes and regulations operable statewide or within the municipality
26 of Kent.

27 **2. Declaration.** No present or future ~~a~~Agricultural ~~e~~Operations conducted or maintained in a manner
28 consistent with accepted customs and standards of the agricultural industry, on a recognized farm which is
29 engaged in the act of farming as defined in this ordinance, shall become or be considered a nuisance solely
30 because such activity resulted or results in any changed condition of the use of adjacent land. Agricultural
31 ~~e~~Operations may occur on holidays, weekends and weekdays by night or day, provided such activities do not
32 violate applicable health, safety, fire, life safety or building codes and regulations.

33 In the event a properly-raised nuisance complaint is submitted pursuant to a valid and adopted Kent
34 ordinance, by a resident of the Town of Kent, the Conservation Commission shall determine whether the
35 activities claimed to be a nuisance are agricultural operations as defined below. Should the activities be
36 determined to be agricultural activities, the nuisance claim shall be dismissed. These provisions shall not
37 apply whenever a nuisance complaint results from the negligent operation of any such agricultural
38 operation.

39 It is herein understood that such ~~Agricultural Operations~~~~practices~~ may result in, for example but
40 include without limitation:

Commented [J51]: Comment from DRB: I would eliminate anything to do with officiating a nuisance. In other words, eliminate lines 33-38. This currently allows a complainant bring legal counsel and to impose dozens of hours on our CC volunteers to fight their battle. If that is too drastic of a revision, eliminate line 37 starting with the words “These provisions...” and all of 38 that require a threshold determination of negligence by the CC. This alone could involve a lengthy hearing process with a complainant whose financial resources for legal paying talent simply cannot be matched by a farmer. I defended a Kent resident in a lawsuit on a similar but not identical issue some years ago sued by a newcomer weekender for whom money was no object.

- 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~~

1 ~~written request to the Selectmen for an advisory opinion or to mediate the dispute. The Selectmen may~~
2 ~~promulgate such regulations and procedures as it deems necessary for the implementation of this section.~~
3 ~~Nothing herein shall preclude any party from either appealing said advisory determination to the Superior~~
4 ~~Court for the Judicial District of Litchfield and/or commencing a direct action in said court to abate the claimed~~
5 ~~nuisance.~~

6
7 **History:** ~~Adopted May 1, 2015, effective June 3, 2015.~~ Adopted originally as Right to Farm Ordinance on May 1,
8 2015, effective June 3, 2015. Revised [date].
9

Chapter 6: Conservation Commission

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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. Adopted originally as Right to Farm Ordinance on May 1, 2015, effective June 3, 2015. Revised [date].

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Declaration. No present or future Agricultural Operations conducted or maintained 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.

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- e) Irrigation and water management associated with normally accepted farming practices.

9.14.23 Clean Copy Revisions with Kent Town Attorney recommendations incorporated

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.

History: Adopted originally as Right to Farm Ordinance on May 1, 2015, effective June 3, 2015. Revised [date].