

**TOWN COUNCIL
WORKSHOP MEETING
MARCH 22, 2000**

The meeting was called to order at 7:07 p.m. Present were Mayor Venis, Vice-Mayor Weiner (arrived 7:37 p.m.), Councilmembers Clark, Cox and Paul. Also present were Town Administrator Middaugh, Town Attorney Webber, Assistant Town Attorney McLean, and Town Clerk Reinfeld recording the meeting.

1. Agrarian/Agriculture Policy

Mr. Middaugh provided background information and indicated that the purpose of this meeting was to look at, and discuss, agrarian policies in our community. He explained that a series of discussions had taken place between the Agrarian Committee and the Development Services' staff and that in order to progress in those discussions, direction was needed from Council.

Mr. Middaugh stated that it had been determined by Council that an opinion was necessary from the Town Attorney regarding whether the Town had any ordinances, Codes or policy provisions that were in conflict with Florida Statutes relative to agricultural operations. He advised that an opinion had been received from Mr. Webber and that it would ultimately be the focus of attention in tonight's discussion. Mr. Middaugh acknowledged that Mr. Webber's opinion helped staff clarify how bits and pieces of legislation fit together with local building codes and that while there was no legislative "cookie cutter" solution, guidelines had been created to interpret agrarian issues. He believed that regardless of policy, these kinds of issues lent themselves to "case-by-case" reviews because of their intricacies and differences.

Mr. Middaugh outlined a discussion agenda and proceeded to have Mr. Webber and Ms. McLean provide a summary of their legal conclusion.

Mr. Webber explained that he was asked to provide an opinion on whether or not the Town's Code conflicted with State law. He advised that the Agrarian Committee had prepared a letter to Councilmember Paul which was a comprehensive memorandum citing several state statutes which pertained to development in agricultural areas which reflected the Committee's position in this issue.

Mr. Webber summarized his findings in general terms stating that the Town did not have the authority to create a law which was in direct conflict with either federal, State, or county law; however, at the same time, the Town did not have to address every state and federal law in its Code. He explained the reasons why a municipality did not address every legislative law which was constantly changing. Mr. Webber stated that "generally," he found no conflicts with the exception of one issue which regarded the definition of "development." He recommended that the Town Code be modified to be identical to that definition which was found in the Comprehensive Plan.

Mr. Webber believed that there were two main areas for discussion with the first one involving the Florida Right to Farm Act (Act). He explained what this Act did and did not do and that it addressed nuisances and was designed to protect farms from encroaching development which would then view normal farming activity as a nuisance. Mr. Webber stated that the cause for a lot of confusion was the definition and concept of a farm as stated in the Act. He read the definition of a farm and then reiterated the statement to emphasize its meaning. Mr. Webber agreed with Mr. Middaugh that issues would have to be reviewed on a case-by-case basis adding that the key determination would be whether the issue involved the farm as defined in the Act.

Mr. Webber stated that the second issue was "development" and he proceeded to read the definition from Florida Statute 380.04, Chapter 163.3164 of the "Local Government

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Comprehensive Planning and Land Development Regulation Act." He noted that the word "structure" was omitted from one section of legislation and not from another and explained how that was to be interpreted as an intentional omission. Mr. Webber therefore concluded that the statement "construction or improvements on non-residential buildings or structures on farms cannot be regulated in any manner by a municipality," was not supported by the applicable statutory sections. He reiterated that these issues would have to meet the test of the definitions and be addressed on an individual basis.

Councilmember Paul stated that she disagreed with Mr. Webber's interpretations in a couple of areas and that what the Agrarian Committee was asking was that the Town follow the "spirit" of the law in terms of State Statutes. She indicated that the purpose was to protect the agricultural community and not have them "wiped off the map" despite the fact that there was no agriculture land included in the Land Use Map. Councilmember Paul indicated that Mr. Webber was taking a narrow approach of a narrow definition to a number of points. She explained what she thought was wrong with reviewing agricultural issues on a case-by-case basis and that the agricultural community would be left up in the air as to what their rights were as far as the Town was concerned.

Councilmember Paul indicated that the objective was to clarify to staff and residents what was permitted in accordance with State law. She stated that people wanted the right to farm without the Town interfering unnecessarily in areas that were protected by State Statute. Councilmember Paul took objection to the statement that horses fell outside the Act as her interpretation of the law was that they were protected. Her concern was that the Town needed to take measures to convey to the agricultural community that they were wanted, their land was open space and it did not cost the Town money in services.

Councilmember Cox inquired on the word "production" indicating that clarification was needed as to what latitudes did production extend. She presented several scenarios to explain her point. Mr. Webber responded that there was no clear definition as to where production started or ended because of the fact that there were different variables. He embellished by presenting a scenario which supported his position that certain issues needed to be examined on a case-by-case basis.

Mayor Venis questioned Mr. Webber's opinion on horse breeding farms and if stalls would be considered protected under the Act. Mr. Webber responded affirmatively. Vice-Mayor Weiner expounded on the scenario further asking about structures designed for exercising those horses and if that could be categorized as production related. Mr. Webber responded affirmatively.

An unidentified lady questioned if Mr. Webber would have to be consulted on all these issues of interpretation regarding structures on agricultural property. Mr. Webber responded that he absolutely would not be involved in that process and that dealing with these issues was the function of the Town's Building Division. He clarified that his involvement in this workshop was to determine whether the Town's Code conflicted with the Florida Statutes and he was obliged to answer the questions as they were asked of him.

Councilmember Cox responded to Councilmember Paul's concerns regarding the absence of agricultural designations in the Land Use Plan and emphasized that the Land Use Plan was only a plan and not engraved in stone. She shared her observation that if a property was to be used only for agriculture and designated as such, that property owner

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would be deprived of his property rights should he want to sell it eventually. Councilmember Cox expressed that the option should be available for the property owner to determine.

Councilmember Paul agreed with Councilmember Cox's point of not wanting to restrict property rights; however, it had appeared that any consideration for agriculture had been left out. She felt that this was why purchaser development rights was such a big issue and advised of a county workshop meeting which would address this issue.

Councilmember Paul spoke of the pressures being placed on agricultural property owners to sell their property for development. She inquired of Mr. Webber whether horse rentals and the renting of stalls for other people's horses would be included under the protection of the Act. Mr. Webber's reply was that it had to be a farm and having horses on property for the purpose of renting them out has been determined by the Town not to constitute a farm.

Vice-Mayor Weiner referenced Section 3C of the Act ". . . not limited to any product derived therefrom" and asked Mr. Webber if that included letting people who did not live on the farm to use the products of the farm such as the rental of horses. Mr. Webber stated that he did not see the rental of horses as being a product if the sole purpose for those horses being there was to be rented out to riders. He saw it as a rental business using horses.

Vice-Mayor Weiner stated that he had a difference of opinion. He explained that what bothered him about the whole issue was that a few years ago, the Town's Charter was amended and one of the provisions was to preserve the Town's rural and agricultural lifestyle. Vice-Mayor Weiner stated that he could not understand why that statement was put into the Charter if the Town intended giving agricultural interests the "shaft" on certain issues. Mr. Webber reiterated that he provided an interpretation and that it was up to the Council to establish policy.

Mayor Venis indicated that several of his clients owned horse farms and he told of the various aspects involved in that business and that the Internal Revenue Service interprets each and every aspect, not just breeding of horses, as a farm. The Mayor invited public comments.

Delia Alonso stated that she was confused with Mr. Webber's interpretation of a farm and asked if a farm must be inspected to make a determination. Mr. Webber did not feel that viewing a farm was necessary. His opinion was that an owner would have to take the activity and apply the statutory definition to it. Ms. Alonso expressed her indignation that someone who had no idea about farming would inspect and judge whether or not a building that was constructed on the farm for the purpose of storing farm equipment was built too long or high or wide. Mr. Webber stated that he was not a farmer, did not claim to be a farmer, and had been asked by the Town to interpret the State Statute, and that he did what he was asked to do.

Arthur Hurley expressed that he was not concerned with what was done with the Code and the reason he was here was because every farm in the Town was taken aside and examined with the attitude that the authority was looking for reasons why it should not be considered a farm. Mr. Hurley stated that this scrutiny was frustrating and that was why he was asking Council to straighten out this process.

Bob Munson spoke on how he was pressured to sell his property due to the denial of agriculture exemptions which he was encouraged to take 37 years ago when land value was less expensive.

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Julie Aiken agreed with what had been expressed by the Agrarian Committee and added that the "product" argument no longer had merit and that the Department of Revenue broadly interpreted agriculture to include all forms of agriculture in all its diversity. She explained that farms have evolved in the past 100 years and that the kinds farms that thrived in an urbanized county such as Broward were horse farms and landscape nurseries. Ms. Aiken stated that the Department of Revenue could not find anything within the law for the property appraiser to "hang his hat on" regarding the "product theory."

Cliff McBroom of Dockside Farms wanted to emphasize the point that was made by Ms. Aiken regarding product. He stated that at a considerable expense, he had challenged the Property Appraiser's Office for denying his agricultural exemption this year. Mr. McBroom ultimately had his exemption reinstated. He explained how having an occupational license had been misconstrued and used against him. Mr. McBroom felt that Mr. Webber's comments on "product" would most likely be quoted by the Property Appraiser's Office to deny his exemption for the next year. He asked that Mr. Webber clarify the intent of his statement that he did not have a product because he did not breed horses and was there anything that addressed agricultural use in the statutes that was different from the farm definition Mr. Webber used.

Mr. Webber assured that none of his comments were directed toward anyone's status for agricultural tax exemptions. He stated that what the Town allowed was not a determining factor as to whether or not a tax exemption was approved. Mr. Webber indicated that there was a Florida Supreme Court decision on this issue which stated that you may look at all the different entities to see whether it was a good faith use for agricultural purposes in which case a person would be entitled to the tax exemption regardless of what it showed on a municipality's comprehensive plan and regardless of the zoning. Mr. Webber added that it was not his intention to say anything to benefit the Property Appraisers Office in somehow taxing anyone's property and he did not think that it should.

Councilmember Paul stated that the Town's occupational license requirement substantiated the point made by Mr. McBroom that farms were not required to have occupational licenses and this point was used against him in obtaining an agricultural tax exemption. She felt that this was another area needing clarification.

Councilmember Cox discussed the idea of having the Town create an agricultural license for a nominal fee. She felt this license would signify that the Town had taken the position that the property was not a business and would stipulate that the property was registered for agricultural purposes.

Mayor Venis stated that it would be just as effective not to charge any fee as an indication that the Town determined that the property should be exempt and a fee was not necessary.

Vice-Mayor Weiner stated that his preference would be not to require any license; however, if an agricultural license was recommended, it be done without a fee. He said that the Property Appraiser's Office would review its Code apart from the Town because they had the authority to make their interpretation. Vice-Mayor Weiner indicated that he would like to decide if property was an agricultural use or not, and then just go forward. He cited Florida Statute 604.50 which exempted stalls from municipal building codes. Vice-Mayor

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Weiner stated that the horse barn belonging to Councilmember Paul's friend was a non-residential structure which was exempt and that he hoped for safety concerns, that she would voluntarily comply with the Code.

Councilmember Paul expressed her thoughts that if an agricultural license was issued, the Town would be back in the position of having someone determine whether or not it was an agricultural use which would add another layer of bureaucracy.

On the question of occupational licenses, Mr. Middaugh clarified the misconception that agricultural or farm uses were not exempt as they were business enterprises. He said that if Council wanted to establish a policy to waive the fee based on the category of the enterprise, he agreed with Vice-Mayor Weiner that it would not break the budget not to charge a fee for occupational licensing of agricultural uses. Mr. Middaugh addressed Mayor Venis' comments regarding building permits and stated that if there was a farm use determined, they would be exempt from building permits; however, the property owner would need to tell the Building Division what was intended so that the determination could be made.

Councilmember Clark questioned the process of identifying a farm and if this was done by Development Services. Development Services Director Mark Kutney replied that they have not done a use interpretation in that regard. Mr. Middaugh explained that the Building Division would have to be told that a new structure was being built and then they would view the structure when asked as part of the permit process.

Mr. Hurley read the Town's definition of a farm stating "the land, building structures and machinery which are primarily adapted in the use of agricultural purposes," and noted the liberal interpretation. He recalled that in the Comprehensive Plan, agricultural purposes was defined. Mr. Hurley stated that instead of using these liberal interpretations, they were hunting elsewhere to try to find out how not to categorize a property as a farm. He indicated that the reason he and others were at this meeting was because whatever the issue may be, they were invariably told that they were not a farm.

Councilmember Paul advised of a program she was involved in which was presented by the Department of Agriculture and called "Fresh from Florida." She explained how the State identified the applicants who were accepted into this program by providing them with a "Fresh from Florida" sign with the name of the business on it. Councilmember Paul stated that this was an indication by the Florida Department of Agriculture that these businesses were in essence farms. She felt that everyone present at this meeting would meet the criteria for this designation and that if the State saw these enterprises as farms, then the Town should agree.

Councilmember Cox questioned a lady from "Pot Luck Nursery" on her dealings with the Town regarding a permit for signage as well as a permit for an agricultural structure. After explaining her experience, the lady requested that Council instruct or educate staff that on farms, permits were not required for signage and related farming structures.

Ms. Aiken stated that presently, a Town ordinance did not exist which exempted farms from signage permits, nor did one exist exempting them from building permits; however, she stated that what did exist in the Code was an exemption from occupational licensing. She exclaimed her frustration that items exempted in the State law were not exempted in the Town's Code and that if this mistake could be made by staff of its own Code, how would it determine the exemptions designated by state law. Mr. Middaugh acknowledged that he stood corrected as he was not an expert on occupational licenses.

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Councilmember Paul indicated that Council needed to decide today how it wanted to appear in the future and she encouraged taking a step forward and doing what was right for the farming community. Councilmember Paul suggested that the steps to be taken were: to educate employees on what the State laws were and on what took precedence over municipal and county ordinances to the extent that if an occupational license was being renewed, the staff member would advise the person that it was not necessary if it were a farming business; to provide a simplified instruction sheet for staff and the public that would make it clear that permits, building codes, zoning ordinances, signage permits, and occupational licenses were not applicable to farms; that a definition of farms as provided by state law for this purpose should be included on the instruction sheet; and that Council prepare amendments for Town ordinances that did not conform to state laws.

Mayor Venis asked if it were possible to have a mechanism installed in the Town's computer system whereby staff would be informed who was entitled to agricultural exemptions. Councilmember Paul reiterated that you first needed to clarify that the definition of a farm was interpreted broadly in order to then register the correct information into the computer. Mayor Venis stated that by having the information in the computer system, the Town would be certifying that these were farms and were exempt, and that would be the information that would be available to "front line" personnel.

Mr. Middaugh commented that by having the Agrarian Committee raise these issues tonight, the exchange of information in these discussions was beneficial to all parties concerned. Using Pot Luck Nursery as an example, he demonstrated that there would be a problem with granting signage exemptions as certain signage was regulated even for farms. Ms. Alonso took issue with this point stating that it was an insult to her judgment to think that she would install a billboard on her farm property. Mr. Middaugh stated that that was not his intent; however, by excluding farmers from those regulations, it would be treating farmers differently than any other property owner.

Ms. Alonso advised that she had spoken with numerous nursery owners since 1996 and found that there were three reasons why they were not here. 1 - The "old timers were so fed up, lost all faith and hope, and would not give two nickels for anything that the Town had to say." 2 - Those who had been harassed to the point that they were afraid of repercussions or "opening a window to further investigations" should they voice their opinions. 3 - The people who felt that if they remained "incognito," the Town would never find them and they would not be harassed. She stated that there were people who have created a legal fund in anticipation of using it when the Town "comes to get them." Ms. Alonso further expounded that there were people who want to buy nurseries in the Town but were holding off and thinking that they might go to Loxahatchee or "sneak in" because "once they find me, they're going to get me." She explained that this was the attitude of people who bought property in the West Ranches in order not to be involved with the Town.

Mr. Kutney explained the activities that staff had taken to reach an understanding of farm interests as expressed by the Agrarian Committee. He stated that under the state laws there was a broad exemption in terms of what the farm rights were; however, it was not an all encompassing exemption, and that was where there was conflict. Mr. Kutney had indicated that it was important to Development Services to look at those issues on a case-by-case basis because as much as everyone would like the Code to be black and white, there were shades of gray. He assured that his current staff was in no way looking to be difficult;

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however, there were questions with a lot of the statutes. Mr. Kutney indicated that in most cases of interpretation, policy needed to be decided by Council thereby clarifying direction for him and staff to follow. He added that until a determination was made by Council, there were some regulations which presently applied and the only way they could be handled was a case-by-case basis.

As an alternative to revamping the computer software and educating staff, Vice-Mayor Weiner suggested rubber stamping all applications for occupational licenses, permits, special permits and anything else that they had been cited for in the past, so that when the application comes before someone at the front desk on anyone from a nursery or horse farm or anything else that was arguably a farm or agriculture, the staff person would notice the stamp immediately which would mean to stop, contact Mr. Kutney or Building Official Tom Willi, have a conference, and leave the applicant be until this issue was resolved. Vice-Mayor Weiner further expounded that once the application was resolved by staff and if the applicant was unhappy with the results, develop a procedure for them to go before the Council or a Special Master or draft some type of ordinance to address it so that it could be resolved without having to involve attorneys.

Mr. McBroom addressed an issue which had been brought up at an agricultural exemption hearing with Broward County which was that if you could look at a piece of property and determine that its primary purpose was agricultural, and then look at the objective of what was being applied for such as a sign or a building, and if the primary purpose of that building was agricultural, then you go a long way to solve a lot of the problems. He stated that if a billboard sign was being placed on farming property, it clearly would not be for purposes of farming and should be red tagged. Mr. McBroom was opposed to the concept of "micro-managing" applications whereby when one was submitted, it would involve meeting with this person and that person to see whether or not it could be done, and come back in two weeks for an answer. He stated that he had put two new roofs on two of his structures without applying for permits because he knew that they were farm buildings on an agricultural property.

Ms. Aiken commented that it was the duty of the Town to verify the law and not the responsibility of each individual farmer, as Mr. Webber suggested, to have to sue the Town to assert their rights. In an effort to clear up any misunderstanding, Mr. Webber responded that he had not suggested that the Town should be sued in order to get some kind of clarification.

Vice-Mayor Weiner inquired if there were any other municipalities that had taken on this issue and developed solutions that the Town could follow. Ms. Alonso stated that Homestead was very open with no problems. She said that there were moratoriums in certain areas and that the relationship between that city and the property appraiser was terrific and welcoming to farming of any kind. Ms. Alonso indicated that other areas where farmers were moving to were Loxahatchee and Sebring. Vice-Mayor Weiner suggested inviting counterparts from these municipalities to meet with staff to see how they were approaching the issue.

Mr. Hurley stated that from his own experience with the County, it took the same position as the Town in the beginning; however, once the County was told that it was a farm, it would leave you alone.

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Ms. Aiken stated that the ordinances in Palm Beach County were no better than Broward County. She distributed some proposed ordinance amendments to help Council get started if it chose to make changes.

Shirley Munson thanked all parties for participating in this meeting and inquired if Council had reached any conclusions on how it would venture forth. Mayor Venis replied that he believed staff had some guidance. Ms. Munson directed her question to Mr. Kutney who responded that he understood this issue was to be pursued further, to look at what other cities were doing, and to develop a process that would be "less painful."

Councilmember Paul commented that in her brief perusal of the proposed ordinance amendments, she found good ideas which should be incorporated and would take the Town a long way to resolve these issues. She admitted her passion for this issue and thanked staff for the long hard hours they devoted to working toward a solution. Councilmember Paul reiterated that if the Town could do some things to support the Agrarian Committee's efforts and help these people stay in the Town, it would be doing a very important thing in saving a little bit of "green."

Mayor Venis inquired when updates could be provided by Development Services. Mr. Kutney indicated that the first update would occur at the next department work program meeting.

There being no further business and no further discussion, the meeting was adjourned at 9:00 p.m.

APPROVED _____

Mayor/Councilmember

Town Clerk