

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP/(954) 797-1101

SUBJECT: Ordinance
ZB(TXT) 7-1-01, Town of Davie

TITLE OF AGENDA ITEM: AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF DAVIE, DELETING SECTION 12-34(B), ENTITLED "AGRICULTURE"; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

REPORT IN BRIEF: The Davie Agricultural Advisory Board had recommended that Town Council delete Section 12-34(B) Agriculture in its entirety from the Land Development Code. On July 3, 2001 Town Council directed the staff to process the amendment in addition to the proposed deletion. Several iterations have been proposed and are attached as back up material to this item.

PREVIOUS ACTIONS: Town Council tabled the item from the September 6, 2001 to the September 19, 2001 meeting (5-0).

Town Council tabled the item from the September 19, 2001 to the November 7, 2001 meeting (5-0).

CONCURRENCES:

The Planning and Zoning Board, sitting as the Local Planning Agency, tabled the item to its September 12, 2001 meeting (4-0 Mr. Bender absent).

The Planning and Zoning Board, sitting as the Local Planning Agency, tabled the item to the October 10, 2001 meeting in order to have staff, Agricultural Advisory Board members, and the Town Attorney meet to draft revisions to the Code (5-0).

The Planning and Zoning Board, sitting as the Local Planning Agency, at its October 10, 2001 meeting recommended deletion of Section 12-34(B) with the stipulation that another ordinance would be simultaneously installed in its place (4-0 Mr. Waitkus absent).

FISCAL IMPACT: None

RECOMMENDATION(S): Motion to amend Section 12-34(B)

Attachment(s): Ordinance, Memo from Town Attorney Control No. 010802, Mrs. Aitken's response, Section 12-34(B) Recommendation Matrix

ORDINANCE _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF DAVIE, DELETING SECTION 12-34(B), ENTITLED "AGRICULTURE"; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Davie authorized the publication of a notice of a public hearing as required by law, that the Code of Ordinances be amended to delete Section 12-34(B) Agriculture;

WHEREAS, the Local Planning Agency of the Town of Davie held a public hearing on August 22, 2001; and

WHEREAS, the Town Council of the Town of Davie held public hearings on September 19, 2001 and October 3, 2001.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE FLORIDA:

SECTION 1. That Section 12-34(B) Agriculture, of the Town Code is amended to read as follows:

~~(B) Agriculture:~~

~~(1) That portion of any structure containing not more than three (3) stalls a maximum of twelve (12) feet by twelve (12) feet, a tack room, and feed room, used for housing or feeding livestock shall be at least forty (40) feet from any other property under separate ownership, from any public road right-of-way or any existing structure. For each additional stall not to exceed twelve (12) feet by twelve (12) feet, an additional ten (10) foot setback shall be required, to a maximum setback of one hundred (100) feet.~~

~~(2) Dude ranches, riding stables, livery stables, breeding, and boarding stables are permitted in the RR, AG, and A-1 districts by special permit issued pursuant to Article X, and are limited to a maximum of eight (8) horses per acre.~~

~~(3) In the RR, AG, A-1, RO, O, CC, B-1, B-2, B-3, M-1, M-2, and M-3 districts, permitted livestock is limited to a total of four (4) livestock on a minimum thirty five thousand (35,000) square foot plot, including cattle, horses, sheep and goats. Ten (10) rabbits and/or twenty five (25) poultry are permitted on a minimum thirty five thousand (35,000) square foot plot, provided however, that the poultry and rabbits are in a completely penned area.~~

~~(4) In the R-1 district, permitted livestock is limited to four (4) livestock on a minimum thirty five thousand (35,000) square foot plot, including cattle, horses, sheep and goats, ten (10) rabbits and/or five (5) poultry; provided, that two (2) additional livestock may be kept for each thirty five thousand (35,000) square feet in excess of the minimum required plot size; and, further provided, that the poultry and rabbits are in a completely penned area.~~

~~(5) In the RR, AG, and A-1 districts, cattle and dairy farms are permitted pursuant to a minimum parcel size requirement of two and one half (2 1/2) acres. Pasture rental is a permitted use in the RR, AG and A-1 districts limited to a maximum of two (2) livestock on a minimum thirty five thousand (35,000) square foot plot and subject to the maximum number of livestock permitted within the district.~~

~~(6) In the R-1 district, pasture rental is limited to a maximum of two (2) livestock on a minimum thirty five thousand (35,000) square foot plot and subject to the maximum number of livestock permitted within the district.~~

~~(7) In the RR, AG, and A-1 districts, retail sales shall be limited to agricultural products grown on-site, and shall be limited to a maximum of twenty five percent of the allowable building space on the site.~~

~~(8) In the RR, AG, and A-1 districts, beekeeping is permitted on a minimum plot of five (5) acres, provided the hives are to be located a minimum of one hundred (100) feet from all property lines.~~

~~(9) Aviaries, roofed hutches, dog houses and dog runs shall be a minimum of forty (40) feet from all property lines in the RR, AG, A-1, R-1, R-2, CC, RO, O, B-1, B-2, and B-3 districts. Roofed hutches, dog houses and dog runs are not permitted within required setbacks in the R-3, R-4 or R-5, RM-5, RM-8, RM-10 districts. Aviaries are not permitted in the R-3, R-4, or R-5 districts.~~

~~(10) In the RR, AG, and A-1 districts, an animal hospital and/or clinic facility may be permitted, subject to the following limitations:~~

~~(a) There shall be adequate soundproofing in any area where animals are contained or treated.~~

~~(b) There shall be no overnight boarding, except in conjunction with medical needs associated with animal hospitals or clinic activities. Exterior runs, cages or exercise areas on a minimum parcel size of three (3) acres may be permitted subject to the following limitations:~~

~~1. Setbacks for exterior runs, cages, or exercise areas for all animals shall be at least fifty (50) feet from all property lines.~~

~~2. That the construction of exterior runs, cages, or exercise areas for small animals such as dogs and cats, incorporate concrete block walls to minimize noise and other disturbances to adjoining properties. Exterior exercise areas for large animals such as horses and cattle shall be enclosed by a fence a minimum of five (5) feet in height.~~

~~3. That the property provides a landscape buffer pursuant to Section 12-107(D)(3) of this chapter.~~

~~(c) A boarding stable may be permitted pursuant to a special permit issued in accordance with Article X and subject to limitations contained in subsection (2) above.~~

~~(d) Kennel facilities as an ancillary use of the animal hospital or clinic facility may be permitted subject to the limitations as specified in subsection (11) below.~~

~~(11) In the RR, AG, and A-1 districts, animal kennel facilities may be permitted, subject to the following limitations:~~

~~(a) There shall be adequate soundproofing in any area where animals are contained or treated.~~

~~(b) There shall be a minimum parcel size of three (3) acres.~~

~~(c) All activities shall be conducted indoors, except that exterior runs, cages or exercise areas may be permitted pursuant to a special permit issued in accordance with Article X; and provided that a site plan submitted with the special permit request reflects the following:~~

~~1. Setbacks for exterior runs, cages or exercise areas of at least fifty (50) feet from all property lines.~~

~~2. That the construction of exterior runs, cages or exercise areas incorporate concrete block walls to minimize noise and other disturbance to adjoining properties.~~

~~3. That the property provides a landscape buffer, pursuant to Section 12-107(D)(3) of this chapter.~~

~~(12) Agricultural uses such as cultivation of crops, groves, thoroughbred and pleasure horses, cattle ranches are permitted in the CC, B-1, B-2, B-3, M-1, M-2, M-3 and RO districts provided the land is free of commercial or industrial structures and such agricultural uses are discontinued upon conversion of the property to an urban use.~~

~~(13) In the RR, AG, and A-1 districts, fish hatcheries are permitted subject to the following limitations:~~

~~(a) There shall be a minimum parcel size of two (2) acres.~~

~~(b) Setbacks for ancillary equipment and structures of at least fifty (50) feet from all property lines.~~

~~(14) Keeping or raising of pigs or hogs shall be prohibited in all zoning districts.~~

~~(15) Raising of horses, cattle, goats, sheep, poultry and rabbits is not permitted in any residential zoning district, except for RR, AG, A-1, and R-1.~~

(B) Reserved.

SECTION 2. All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 3. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

SECTION 4. This Ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS _____ DAY OF _____, 2001.

PASSED ON SECOND READING THIS _____ DAY OF _____, 2001.

ATTEST:

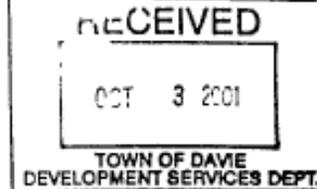
MAYOR/COUNCILMEMBER

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2001.

P/2

MONROE D. KIAR
TOWN ATTORNEY
TOWN OF DAVIE
6191 SW 45th Street, Suite 6151A
Davie, Florida 33314
Telephone (954) 584-9770



MEMORANDUM

DATE: September 28, 2001
TO: Mayor and Councilmembers
Tom Willi, Town Administrator
Mark A. Kutney, Development Services Director
CC: courtesy copy provided to Mrs. Aitken
FROM: Monroe D. Kiar *MJK*
RE: Control No. 010802
Section 12-34

TOWN OF DAVIE
2001 OCT -2 P 3:49
ADM. SVCS. DEPT.

Request: This office has been requested to meet with Mrs. Aitken and discuss her desire and the desire of some other residents concerning a change to portions of Section 12-34.

Answer: I met with Mrs. Aitken and also Mr. Hurley and Mr. Curtis to discuss this matter.

Discussion:

Some background may be of assistance to the Town Council.

There is an issue concerning the Town's right to regulate and rights of certain farming activities to be regulated. You have heard certain phrases mentioned. You have heard of the "Right to Farm Act." This Office has given an opinion that the Town does have the ability to regulate, subject to the Right to Farm Act.

1977

F.S. §823.14 (6) of the Florida Right to Farm Act provides that "(6) LIMITATION ON DUPLICATION OF GOVERNMENT REGULATION.--It is the intent of the Legislature to eliminate duplication of regulatory authority over farm operations as expressed in this subsection. Except as otherwise provided for in this section and s. 487.051(2), and notwithstanding any other provision of law, a local government may not adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, where such activity is regulated through implemented best-management practices or interim measures developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or water management districts and adopted under chapter 120 as part of a statewide or regional program. When an activity of a farm operation takes place within a wellfield protection area as defined in any wellfield protection ordinance adopted by a local government, and the adopted best-management practice or interim measure does not specifically address wellfield protection, a local government may regulate that activity pursuant to such ordinance. This subsection does not limit the powers and duties provided for in s. 373.4592 or limit the powers and duties of any local government to address an emergency as provided for in chapter 252."

This office is of the opinion that the regulations of Section 12-34 as discussed in the memorandum are valid and enforceable so long as they do not conflict with the Florida Right to Farm Act. So, for example, a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, where such activity is regulated through implemented best-management practices or interim measures developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or water management districts and adopted under chapter 120 as part of a statewide or regional program would be controlled by those regulations, and the Town on such specified properties could not adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit such properties. This law does not mean that municipalities are prohibited from regulating farm and agriculture land. It is a policy decision as to what regulations it considers appropriate.

This Office is attaching a copy of the presently existing Code portion of §12-34. And, it is attaching a copy of the proposed changes that this Office is of the understanding that Mrs. Aitken would be satisfied with, and along with those proposed changes, this Office comments on the Ramifications if the change is adopted. Please note that changes where Mrs. Aitken desires to have words eliminated, a ~~strikeout~~ is used, and for words that she desires added, underlying is used.

This Office is presenting what it believes is Mrs. Aitken's position, and what this office believes are the ramifications of those changes. It continues to be the position of this Office that the regulations as contained in Section 12-34 are permissible if the Town Council desires them as policy. From a legal perspective, the Town does not have to make any

changes or the Town can make some or all of the changes. The Town just needs to understand the ramifications of the changes. For example, the freedom of one property owner to have unlimited livestock may cause odor and noise problems for that property owner's neighbors. The Town needs to decide what policy decisions it desires to make which affect the freedom of one property owner to use his/her/its property and the protection to be given by the Town through its regulations to the neighbors of that property owner when that use hurts the use and enjoyment of the neighboring property owners.

It is emphasized that this Office is not making any policy determination. Consequently, the language for the change in the Ordinance is that which this Office understands is acceptable to Mrs. Aitken. But, it does not mean that it is either acceptable or unacceptable to this Office. Furthermore, the Ramifications indicate the effect that the changes will potentially have, not that this Office is making a policy determination concerning whether the Town Council should consider the effect good or bad policy.

This Office does feel strongly concerning the power of the Town Council to make policy decisions in this matter, but what that policy should be is left up to the Town Council.

If there are any further questions on this matter, please advise.

OAKRIDGE FARM

3801 FLAMINGO ROAD, DAVIE, FL. 33330
(954) 473 1384/473 1684 FAX 474 8101

October 8, 2001

Re: Town Attorney's Memorandum of 9/28/01 concerning changes to sec. 12-34

Dear Mayor, Vice Mayor and Councilmembers,

I obtained a copy of this memorandum, which was not forwarded to me, and would begin by clarifying some inaccuracies in the background information provided.

On September 12th, the Planning Board directed Mr. Kiar to meet with me, as the representative for the Davie Agricultural Advisory Board, to draft a replacement for Sec. 12-34(B) Agriculture that was agreeable to both of us. Mr. Kutney was likewise directed to draft staff's version of the same and both versions are to be presented for consideration at the Planning Board's meeting of October 10th.

The draft replacement of 12-34 contained in the memorandum is not my version, which I already submitted to you by e-mail. It is a compromise arrived at during a four hour meeting, largely copied from the recent Broward County farm amendments where applicable, and apparently agreed upon at that time by Mr. Kiar. The County attorneys thoroughly researched the law on this matter before drafting their farm amendments, which were unanimously passed by the County Commission.

The basic issue in controversy seems to be whether the regulations of the Town of Davie Land Development Code apply to "the use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes", i.e. agricultural use on a farm.

The Town Attorney expresses the opinion that the regulations in sec. 12-34, part of the Davie Land Development Code, are applicable to agricultural use subject to the Right to Farm Act. Mr. Kiar has based his opinion of the validity of land development regulations being applied to farms on the Right to Farm Act, s.823.14, Florida Statutes.

However, the governing statute for the regulations of the Town of Davie Land Development Code is Chapter 163 of the Florida Statutes, not s. 823.14. It is stated in the Davie Code of Ordinances, Chapter 12 Land Development Code, Sec. 12-2, Legislative Intent: "This chapter conforms to the Town of Davie Comprehensive Plan, and furthers the goals, objectives and policies contained herein. Further, this ordinance is in conformance with Chapter 163, Florida Statutes."

Chapter 163 in s.163.3194(b) Legal Status of Comprehensive Plan states, "All land development regulations enacted or amended shall be consistent with the adopted comprehensive plan...and any land development regulations existing at the time of adoption which are not consistent with the adopted comprehensive plan...shall be amended so as to be consistent."

Chapter 163 in s.163.3161, the 'Local Government Comprehensive Planning and Land Development Act', (2) Intent and Purpose, goes on to say, "...it is the purpose of this act to utilize and strengthen the existing role, processes, and powers of local governments in the

establishment and implementation of comprehensive planning programs to guide and control future development."

Chapter 163 in s.163.3221(4) then states, "Development" means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels." And in (4)[b] "The following operations or uses shall not be taken for the purpose of this act to involve 'development':...5. The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes." The Town of Davie Comprehensive Plan reiterates this exemption from development regulations for farms in precisely these same words, as does Chapter 380 of the Florida Statutes.

Chapter 163 in s. 163.3221(4)[c] 8. Goes on to define 'land development regulations' as "ordinances enacted by the governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land." This definition is also reiterated in the Davie Code of Ordinances, Sec. 12-503, in precisely the same words.

Hence, **State law mandates that all 'land development regulations' be consistent with the adopted Comprehensive Plan, which is governed by Chapter 163 of the Florida Statutes, both of which exempt agricultural use on farms from all land development regulations, including zoning. Sec. 12-34(B) Agriculture is made up of zoning regulations, which are land development regulations from which agricultural use is exempt, and is not consistent with the Town of Davie Comprehensive Plan governed by Chapter 163 of the Florida Statutes. Therefore, State law mandates that sec. 12-34(B) be amended to be consistent with the Comprehensive Plan and State law.**

Further, Chapter 166 Municipalities, in s.166.021 Powers (3)[c], which Mr. Kiar cited in his letter addressed to me and copied to Council, also dated 9/28/01, states that "the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except: any subject expressly preempted to the state or county government by the constitution or by general law." So, while it is agreed that a municipality has a broad exercise of powers, only strengthened by Chapter 163, the Local Government Comprehensive Planning Act, in the matter of applying land development regulations to agricultural use on farms, **the State Legislature has exempted agricultural use from land development regulations and preempted municipal government in this matter.**

This was recently affirmed by the Florida Supreme Court in Schultz v Love PGI Partners (731, So.2d 127, Fla. 1999) citing the Appellate Court decision in Love PGI Partners v Schultz (706 So. 2d 887 Fla. 5th DCA, 1998) which concluded that agricultural uses were excluded from regulation of development based on Chapter 380 (and Chapter 163) of the Florida Statutes.

It appears to me that the Town Attorney has relied on the wrong law in formulating his opinion, since it is Chapter 163, the Local Government Comprehensive Planning Act, which governs land development regulations, and s.823.14, the Right to Farm Act, set up in

1979 to preserve agricultural uses in urbanizing counties, which controls, while protecting, farm activities.

The Right to Farm Act is not a blank slate for farmers. The farm operation must conform to "generally accepted agricultural and management practices" and may not change to a more excessive farm operation with regard to noise, odor, dust, or fumes. In an amendment last year, it was reiterated that "a local government may not adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to s. 193.361, where such activity is regulated through implemented best-management practices or interim measures..." The South Florida Water Management District has already formulated best-management practices for nurseries and is in the process of developing the same for livestock operations. In the meantime, generally accepted agricultural and management practices apply to livestock operations.

Therefore, the ramifications as expressed by the Town Attorney are either non-sequiturs, since there is a level of control not described in his memorandum, or misinterpretations of the proposed wording. Without going into excruciating detail, I will endeavor to provide you with a few examples of his erroneous conclusions:

Section 12-34(B) [1], setbacks, proposed wording, "This requirement shall not apply to non-residential farm buildings or structures on farms..." (taken from the Broward County Code of Ordinances). There is no requirement that the farm be 'non-residential', as misinterpreted by the Town Attorney. (This section was a compromise, not strictly in compliance with State law, written into the Broward farm amendments.)

Section 12-34(B) [2], Dude ranches, etc. These categories have already been removed from the Davie Code of Ordinances and no longer exist, except under the general heading of 'Agricultural Uses' and 'Farms'. This portion of 12-34 is no longer applicable to any category. (I would also point out that, if not deleted, this paragraph would expressly allow my property of 18.7 acres to maintain up to 149 head of horses, instead of the 30-40 that any generally accepted agricultural and management practices would recommend. It would also allow the Bar B Ranch on 25 acres to maintain 200 head of horses, instead of the 40-50 that the property currently maintains. On a 5 acre farm, 40 head of horses would be allowed, again excessive.) There are no ramifications to changing this paragraph.

Section 12-34(B) [3] limitation on numbers and types of livestock. This paragraph is in direct conflict with paragraph [2] which, as written, allows me 149 head of horses on my property if not deleted. Under paragraph [3], since my land is zoned AG, I am currently allowed 93 head of horses, although the previous paragraph allows me 149 head, both numbers being wildly excessive to any generally accepted agricultural and management practices. The Bar B Ranch, zoned A-1, would be allowed 124 head, although allowed by the previous paragraph to maintain 200 head, both numbers, again, being wildly excessive to any generally accepted agricultural and management practices. The restriction on the keeping or raising of pigs is Mr. Klar's personal opinion, not reflected in State law, only agreed upon as a compromise. In the Broward County Farm Amendments, there is no restriction on the keeping or raising of pigs in the Rural Ranches zoning. There are no ramifications to changing this paragraph.

Section 12-34(B) [7] limitation on size of building space for the sale of agricultural products on farms. Since the Town already has no control over the building of non-residential farm structures on farms by permits or codes, as specified by State law and adopted into the Davie Ordinances, it clearly has no control over the size of such buildings at present, regardless. The retention of this paragraph is a moot point and, as such, should be deleted. The word 'kept' is described in FAC rule 12d-1.002 pursuant to agricultural classification.

Section 12-34(B) [10][c] limitations on a boarding stable. This category has already been removed from the Davie Code of Ordinances and no longer exists except under the general heading of 'agricultural uses' and 'farms'. This portion is no longer applicable to any category. There are no ramifications to changing this paragraph.

Any excessive agricultural operation can be judged under the limitations imposed by the Right to Farm Act, not land development regulations from which farms are exempt. Moreover, sec. 12-33(T) of the Davie Code of Ordinances already deals with Nuisances, which would include excessive farm operations that do not conform to generally accepted agricultural and management practices or best-management practices, when the latter are adopted.

While I appreciate that only one member of the Council is an attorney, that our Town Attorney is not currently in the best of health and may not have had time to give this issue his fullest attention, and that I am only a farmer and not an attorney, although I have spent the last twelve years studying the same chapter on agriculture in the law books, I believe I have supplied to you a full and complete analysis on the law in reference to this matter. I believe the Town Attorney is mistaken in both his legal opinion and the ramifications to amending this section of the Davie Land Development Code as he envisions them. I believe that the Planning Board will be further confused by the Town Attorney's memorandum and that, ultimately, this issue will return to Council for a decision.

I trust that Council will remember the basis for last year's Davie farm amendments, will acknowledge the legal research that went into the Broward farm amendments, and will correct this oversight so that the Davie Land Development Code can be brought into compliance with State law.

Sincerely,

Julie Aitken

(A)
EXISTING

(B) Agriculture

(1) That portion of any structure containing not more than three (3) stalls a maximum of twelve (12) feet by twelve (12) feet, a tack room, and feed room, used for housing or feeding livestock shall be at least forty (40) feet from any other property under separate ownership, from any public road right-of-way or any existing structure. For each additional stall not to exceed twelve (12) feet by twelve (12) feet, an additional ten (10) foot setback shall be required, to a maximum setback of one hundred (100) feet.

(B)
AITKEN/MONROE

(B)-Agriculture (L) Animals

(1) That portion of any structure containing not more than three (3) stalls a maximum of twelve (12) feet by twelve (12) feet, a tack room, and feed room, used for housing or feeding livestock shall be at least forty (40) feet from any other property under separate ownership, from any public road right-of-way or any existing structure. For each additional stall not to exceed twelve (12) feet by twelve (12) feet, an additional ten (10) foot setback shall be required, to a maximum setback of one hundred (100) feet. ~~This requirement shall not apply to non-residential farm buildings or structures on farms used for agricultural purposes on a plot larger than five (5) acres in size. On any farm less than five (5) acres in size, any farm building or structure on a portion of a plot occupied by a farm shall either be located not less than fifty (50) feet from any lot line or shall have a butler consisting of an opaque fence, hedge or berm to a minimum height of six (6) feet.~~

(C)
RAMIFICATIONS (MONROE)

For any non-residential farm more than 5 acres, there would be no number of stall limitation, no set back limitation and no size limitation to a non-residential farm building. The property owner would have complete freedom to unlimited number of stalls, unlimited size and no set back, and the town could not prohibit this even if the neighbors who were adversely affected by such action.

For any farm less than 5 acres (whether or not non-residential or residential), there would be either a 50 foot setback for a structure or a butler of opaque fence, hedge or berm of a minimum height of 6 feet. This means that if the opaque fence, hedge or berm of a minimum height of 6 feet is done, then there would be no setback requirement, and the town could not prohibit this even if the neighbors were adversely affected by a structure which was built with no setback as long as there was a butler of opaque fence, hedge or berm of a minimum height of eight of 6 feet.

(D)
STAFF COMMENTS

Title: The term "agriculture" is consistent with the editorial note defining agriculture under Section 12-32 Table of Permitted Uses.

Section 1: Staff is of the opinion that this section is adequate and no changes are necessary. The amendment proposed in Column B appears to be an arbitrary figure and would require further justification as to its suitability.

(E)
STAFF RECOMMENDATIONS

Title: No changes to title.

Section 1: Staff recommends changing to a 14' X 14' stall, acknowledging larger breeds of livestock.

(A) EXISTING	(B) ATTEN/MONROE	(C) RAMIFICATIONS (MONROE)	(D) STAFF COMMENTS	(E) STAFF RECOMMENDATIONS
<p>(2) Dude ranches, riding stables, livery stables, breeding and boarding stables are permitted in the RR, AG, and A-1 districts by special permit issued pursuant to Article X, and are limited to a maximum of eight (8) horses per acre.</p>	<p>2) Dude ranches, riding stables, livery stables, breeding and boarding stables are permitted in the RR, AG, and A-1 districts by special permit issued pursuant to Article X, and are limited to a maximum of eight (8) horses per acre.</p>	<p>There would be no requirement for a dude ranch, riding stable, livery stable, breeding and boarding stable in RR, AG and A-1 districts to get a special permit and there would be no limit on the number of horses as indicated in this subparagraph.</p>	<p>Staff believes the provision is necessary to address and regulate potential impacts of boarding and riding stables on surrounding property. However, staff is in agreement with deleting breeding from this section as such activity is consistent with the definition of farm in the Right to Farm Act (82314).</p>	<p>(2) Dude ranches, riding stables, livery stables, breeding and boarding stables are permitted in the RR, AG, and A-1 districts by special permit issued pursuant to Article X, and are limited to a maximum of eight (8) horses per acre.</p>

(A) EXISTING	(B) ATTEN/MONROE	(C) RAMIFICATIONS (MONROE)	(D) STAFF COMMENTS	(E) STAFF RECOMMENDATIONS
<p>(3) In the RR, AG, A-1, RO, O, CC, B-1, B-2, B-3, M-1, M-2, and M-3 districts, permitted livestock is limited to a total of four (4) livestock on a minimum thirty-five thousand (35,000) square foot plot, including cattle, horses, sheep and goats, ten (10) rabbits and/or twenty-five (25) poultry are permitted on a minimum thirty-five thousand (35,000) square foot plot, provided however, that the poultry and rabbits are in a completely fenced area.</p>	<p>(4) (2) In the RR, AG, A-1, RO, O, CC, B-1, B-2, B-3, M-1, M-2, and M-3 districts, permitted livestock is limited to a total of four (4) livestock on a minimum thirty-five thousand (35,000) square foot plot, including cattle, horses, sheep and goats, ten (10) rabbits and/or twenty-five (25) poultry are permitted on a minimum thirty-five thousand (35,000) square foot plot, provided however, that the poultry and rabbits are in a completely fenced area. The number and type of animals shall not be restricted for agricultural purposes in those districts subject to restrictions of the keeping or raising of pigs or hogs as set forth below in <u>subparagraph III.</u></p>	<p>There would be no restriction at all on the number and types of animals on a farm. This means that if a property has a farm classification of his/her/its property, and that property borders a residential area, that (except for pigs and hogs, which is discussed in subparagraph 1)) there could be no restriction at all on the number and type of animals. So, that property owner could bring in an unlimited number and type of animal on his/her/its property, and the Town would not be able to prohibit this even if the neighbors were adversely affected.</p>	<p>In staff's judgment, the current regulation is appropriate, works, and merits no change.</p>	<p>No changes to existing provision.</p>

(A)
EXISTING

(4) In the R-1 district, permitted livestock is limited to four (4) thousand (35,000) square foot plot, including cattle, horses, sheep and goats, ten (10) rabbits and/or five (5) poultry; provided, that two (2) additional livestock may be kept for each thirty-five thousand (35,000) square feet in excess of the minimum required plot size; and, further provided, that the poultry and rabbits are in a completely fenced area.

(B)
AITKEN/MONROE

(4)(c) In the R-1 district, permitted livestock is limited to four (4) thousand (35,000) square foot plot, including cattle, horses, sheep and goats, ten (10) rabbits and/or five (5) poultry; provided, that two (2) additional livestock may be kept for each thirty-five thousand (35,000) square feet in excess of the minimum required plot size; and, further provided, that the poultry and rabbits are in a completely fenced area. ~~The number and types of animals shall not be restricted on farms existing on the date this Ordinance is adopted by the Town Council used for an agricultural purpose in this district. The transfer of ownership of any such existing farm or change of agricultural use shall not change its status from that of a farm, subject to the restrictions on the keeping or raising of pigs or hogs as set forth below in subparagraph (11).~~

(C)
RAMIFICATIONS (MONROE)

In R-1 districts, this means that the number and types of animals shall not be restricted in any way (except for pigs and hogs as discussed in paragraph 11) on farms existing on the date this Ordinance is adopted by the Town Council. Therefore, if the number and type of animals increased dramatically, which caused nuisance or annoyance to the neighbors as a result of the increase, there is nothing that the Town could do to prohibit this even if the neighbors are adversely affected as a result of the increase.

(D)
STAFF COMMENTS

In staff's view, this section is appropriate and is also important since it protects property in the R-1 (residential) district while balancing the rights of individuals wanting to maintain such livestock.

(E)
STAFF RECOMMENDATIONS

No changes to existing provision.

(A)
EXISTING

(5) In the RR, AG, and A-1 districts, cattle and dairy farms are permitted pursuant to a minimum parcel size requirement of two and one-half (2-1/2) acres. Pasture rental is a permitted use in the RR, AG and A-1 districts limited to a maximum of two thousand (35,000) square foot plot and subject to the maximum number of livestock permitted within the district.

(B)
ATTEN/MONROE

4949 In the RR, AG, and A-1 districts, cattle and dairy farms are permitted pursuant to a minimum parcel size requirement of two and one-half (2-1/2) acres. Pasture rental is a permitted use in the RR, AG and A-1 districts limited to a maximum of two thousand (35,000) square foot plot and subject to the maximum number of livestock permitted within the district. This limitation on the number of livestock shall not apply to farms used for agricultural purpose in these districts.

(C)
RAMIFICATIONS (MONROE)

This means that there would be no limitation on the number of livestock in RR, AG, and A-1 districts for cattle and dairy farms, and there is nothing that the Town could do to prohibit this even if the neighbors are adversely affected.

(D)
STAFF COMMENTS

Staff does not agree with the proposal in Column B because the livestock limitation relates to pasture rental in the RR, AG and A-1 districts. Essentially, the provision is suitable as it currently exists.

(E)
STAFF RECOMMENDATIONS

No changes to existing provision.

(A)
EXISTING

(6) In the R-1 district, pasture rental is limited to a maximum of two (2) livestock on a minimum thirty-five thousand (35,000) square foot plot and subject to the maximum number of livestock permitted within the district.

(B)
AITKEN/MONROE

(4) (5) In the R-1 district, pasture rental is limited to a maximum of two (2) livestock on a minimum thirty-five thousand (35,000) square foot plot and subject to the maximum number of livestock permitted within the district. This limitation on the number of livestock shall not apply to farms existing on the date this Ordinance is adopted by the Town Council used for an agricultural purpose in this district. The number and types of animals shall not be restricted on farms existing on the date this Ordinance is adopted by the Town Council used for an agricultural purpose in this district. The transfer of ownership of any such existing farm or change of agricultural use shall not change its status from that of a farm.

(C)
RAMIFICATIONS (MONROE)

This means that in R-1 districts, for pasture rentals there would be no limitation on the number and type of livestock and animals on farms existing on the date this Ordinance is adopted by the Town Council. The number of livestock and animals could be unlimited, and there is nothing that the Town could do to protect neighbors who were adversely affected as a result of the unlimited number of livestock or animals.

(D)
STAFF COMMENTS

The current regulation is very satisfactory as it permits a property owner in R-1 to conduct pasture rental with two (2) livestock on the property per thirty-five thousand (35,000) square feet.

(E)
STAFF RECOMMENDATIONS

No changes to existing provision.

(A)
EXISTING

(7) In the RR, AG, and A-1 districts, retail sales shall be limited to agricultural products grown on site, and shall be limited to a maximum of twenty-five percent of the allowable building space on the site.

(B)
AITKEN/MONROE

(9) (b) In the RR, AG, and A-1 districts, retail sales shall be limited to agricultural products grown, kept, or raised on site, and shall be limited to a maximum of twenty-five percent of the allowable building space on the site. The limitation on the size of building space shall not apply to farms used for an agricultural purpose in these districts.

(C)
RAMIFICATIONS (MONROE)

This means that the Town would have no control over any size limitation on building space for farms used for an agricultural purpose in RR, AG, and A-1 districts.
The word "kept" is not defined or described.

(D)
STAFF COMMENTS

Relative to the proposal in Column B, staff is in agreement with the Town Attorney and is not sure of the purpose related to "kept or raised." Further, staff is in agreement with the removal of twenty-five percent of the allowable building space on the site and recommends its deletion.
Staff recognizes that such establishments will most likely have some portion of its inventory related to agricultural products but not necessarily grown on site. Additionally, small portions of such inventory may include ancillary products.

(E)
STAFF RECOMMENDATIONS

(7) In the RR, AG, and A-1 districts, retail sales shall be limited to ~~primarily~~ agricultural products grown on site ~~and shall be limited to a maximum of twenty-five percent of the allowable building space on the site.~~

(A) EXISTING	(B) ATKENTONMONROE	(C) RAMIFICATIONS (MONROE)	(D) STAFF COMMENTS	(E) STAFF RECOMMENDATIONS
<p>(S) In the RR, AG, and A-1 districts, beekeeping is permitted on a minimum plot of five (5) acres, provided the hives are to be located a minimum of one hundred (100) feet from all property lines.</p>	<p>4-17 In the RR, AG, and A-1 districts, beekeeping is permitted on a minimum plot of five (5) acres, provided the hives are to be located a minimum of one hundred (100) feet from all property lines.</p>	Name	Staff concurs.	No changes to existing provision.

(A) **EXISTING**
 Avianes, roofer hatches, dog houses and dog runs shall be a minimum of forty (40) feet from all property lines in the RR, AG, A-1, R-1, R-2, CC, RO, O, B-1, B-2, and B-3 districts. Roofer hatches, dog houses and dog runs are not permitted within required setbacks in the R-3, R-4 or R-5, RM-5, RM-8, RM-10 districts. Avianes are not permitted in the R-3, R-4, or R-5 districts.

(B) **AITKEN/MONROE**
 Avianes, roofer hatches, dog houses and dog runs shall be a minimum of forty (40) feet from all property lines in the RR, AG, A-1, R-1, R-2, CC, RO, O, B-1, B-2, and B-3 districts. Roofer hatches, dog houses and dog runs are not permitted within required setbacks in the R-3, R-4 or R-5, RM-5, RM-8, RM-10 districts. Avianes are not permitted in the R-3, R-4, or R-5 districts.

(C) **RAMIFICATIONS (MONROE)**
 None

(D) **STAFF COMMENTS**
 Staff concurs; however, future amendments should address the issue of separating kennel and veterinarian-related provisions into separate sections.

(E) **STAFF RECOMMENDATIONS**
 No changes to existing provision.

(A)
EXISTING

(10) In the RR, AC, and A-1 districts, an animal hospital and/or clinic facility may be permitted, subject to the following limitations.

(a) There shall be adequate soundproofing in any area where animals are contained or treated.

(b) There shall be no overnight boarding, except in conjunction with medical needs associated with animal hospitals or clinic activities. Exercise runs, cages or exercise areas on a minimum parcel size of three (3) acres may be permitted subject to the following limitations:

1. Setbacks for exterior runs, cages, or exercise areas for all animals shall be at least fifty (50) feet from all property lines.

2. That the construction of exterior runs, cages, or exercise areas for small animals such as dogs and cats, incorporate concrete block walls to minimize noise and other disturbances to adjoining properties. Exterior exercise areas for large animals such as horses and cattle shall be enclosed by a fence a minimum of five (5) feet in height.

3. That the property provides a landscape buffer pursuant to Section 2.107(D)(3) of this chapter.

(c) A boarding stable may be permitted pursuant to a special permit issued in accordance with Article X and subject to limitations contained in subsection (2) above.

(d) Kennel facilities as an ancillary use of the animal hospital or clinic facility may be permitted subject to the limitations as specified in subsection (11) below.

(B)
AITKEN/MONROE

449(9) In the RR, AC, and A-1 districts, an animal hospital and/or clinic facility may be permitted, subject to the following limitations.

(a) There shall be adequate soundproofing in any area where animals are contained or treated.

(b) There shall be no overnight boarding, except in conjunction with animal hospitals or clinic activities. Exercise runs, cages or exercise areas on a minimum parcel size of three (3) acres may be permitted subject to the following limitations:

1. Setbacks for exterior runs, cages, or exercise areas for all animals shall be at least fifty (50) feet from all property lines.

2. That the construction of exterior runs, cages, or exercise areas for small animals such as dogs and cats, incorporate concrete block walls to minimize noise and other disturbances to adjoining properties. Exterior exercise areas for large animals such as horses and cattle shall be enclosed by a fence a minimum of five (5) feet in height.

3. That the property provides a landscape buffer pursuant to Section 2.107(D)(3) of this chapter.

44-4 Boarding stable may be permitted pursuant to a special permit issued in accordance with Article X and subject to limitations contained in subsection 44-4 above.

44-4(c) Kennel facilities as an ancillary use of the animal hospital or clinic facility may be permitted subject to the limitations as specified in subsection (11) below.

(C)
RAMIFICATIONS (MONROE)

It takes away requiring a boarding stable being required to obtain a special permit and takes away any limitation on the number of livestock.

(D)
STAFF COMMENTS

Staff does not agree with the suggested change in Column B since the boarding stable in question relates to animal hospitals and clinics that may hold domestic and agriculturally-related animals. Therefore, the special permit requirements are essential in protecting the property rights of surrounding owners.

(E)
STAFF RECOMMENDATIONS

No changes to existing provisions.

(A) EXISTING	(B) AITKEN/MONROE	(C) RAMIFICATIONS (MONROE)	(D) STAFF COMMENTS	(E) STAFF RECOMMENDATIONS
<p>(11) In the RR, CR, AG, and A-1 districts, animal kennel facilities may be permitted, subject to the following limitations:</p> <p>(a) There shall be adequate soundproofing in any area where animals are contained or treated.</p> <p>(b) There shall be a minimum parcel size of three (3) acres.</p> <p>(c) All activities shall be conducted indoors, except that exterior runs, cages or exercise areas may be permitted pursuant to a special permit issued in accordance with Article X; and provided that a site plan submitted with the special permit request reflects the following:</p> <ol style="list-style-type: none"> 1. Setbacks for exterior runs, cages or exercise areas of at least fifty (50) feet from all property lines. 2. That the construction of exterior runs, cages or exercise areas incorporate concrete block walls to minimize noise and other disturbance to adjoining properties. 3. That the property provides a landscape buffer, pursuant to Section 12-107(D)(3) of this chapter. 	<p>(10) In the RR, AG, and A-1 districts, animal kennel facilities may be permitted, subject to the following limitations:</p> <p>(a) There shall be adequate soundproofing in any area where animals are contained or treated.</p> <p>(b) There shall be a minimum parcel size of three (3) acres.</p> <p>(c) All activities shall be conducted indoors, except that exterior runs, cages or exercise areas may be permitted pursuant to a special permit issued in accordance with Article X; and provided that a site plan submitted with the special permit request reflects the following:</p> <ol style="list-style-type: none"> 1. Setbacks for exterior runs, cages or exercise areas of at least fifty (50) feet from all property lines. 2. That the construction of exterior runs, cages or exercise areas incorporate concrete block walls to minimize noise and other disturbance to adjoining properties. 3. That the property provides a landscape buffer, pursuant to Section 12-107(D)(3) of this chapter. 	None	Staff concurs. Please see comments in section 9.	No changes to existing provision.

(A) EXISTING	(B) AITKEN/MONROE	(C) RAMIFICATIONS (MONROE)	(D) STAFF COMMENTS	(E) STAFF RECOMMENDATIONS
(12) Agricultural uses such as cultivation of crops, groves, thoroughbred and pleasure horses, cattle ranches are permitted in the CC, B-1, B-2, B-3, M-1, M-2, M-3 and RO districts provided the land is free of commercial or industrial structures and such agricultural uses are discontinued upon conversion of the property to an urban use.	(11) (11) Agricultural uses such as cultivation of crops, groves, thoroughbred and pleasure horses, cattle ranches are permitted in the CC, B-1, B-2, B-3, M-1, M-2, M-3 and RO districts provided the land is free of commercial or industrial structures and such agricultural uses are discontinued upon conversion of the property to an urban use by the <u>PROPERTY OWNER or with the ACQUIRESMENT.</u>	None	Staff needs justification for the necessity related to the recommended language in Column B.	No changes to existing provision.

(A) EXISTING	(B) ATTEN/MONROE	(C) RAMIFICATIONS (MONROE)	(D) STAFF COMMENTS	(E) STAFF RECOMMENDATIONS
<p>(13) In the RR, AG, and A-1 districts, fish hatcheries are permitted subject to the following limitations:</p> <p>(a) There shall be a minimum parcel size of two (2) acres.</p> <p>(b) Setbacks for ancillary equipment and structures of at least fifty (50) feet from all property lines.</p>	<p>(13) (12) In the RR, AG, and A-1 districts, fish hatcheries are permitted subject to the following limitations:</p> <p>(a) There shall be a minimum parcel size of two (2) acres.</p> <p>(b) Setbacks for ancillary equipment and structures of at least fifty (50) feet from all property lines.</p>	None	Staff concurs.	No changes to existing provision.

(A) EXISTING	(B) AITKEN/MONROE	(C) RAMIFICATIONS (MONROE)	(D) STAFF COMMENTS	(E) STAFF RECOMMENDATIONS
(14) Keeping or raising of pigs or hogs shall be prohibited in all zoning districts	444. (13) Keeping or raising of pigs or hogs shall be prohibited in all zoning districts. It is presumed that the raising, breeding or keeping of swine of any type except for (1) Potbellied Vietnamese Pig shall be presumed to be a nuisance and shall not be allowed and shall be prohibited in all zoning districts.	The Town can have such a limitation. The Town is supposed to have such a limitation. If the Town has to decide as a policy if it desires to have this limitation as concerns swine, which are notorious for environmental problems.	Staff does not agree with the recommended language in Column B. It is staff's recommendation that the existing section is appropriate with the recommended proposal by staff in Column E.	14) Keeping or raising of pigs or hogs shall be prohibited in all zoning districts, with the exception of one (1) Potbellied Vietnamese Pig to be raised as a domestic household pet.

(A) EXISTING	(B) ATTEN/MONROE	(C) RAMIFICATIONS (MONROE)	(D) STAFF COMMENTS	(E) STAFF RECOMMENDATIONS
(15) Raising of horses, cattle, goats, sheep, poultry and rabbits is not permitted in any residential zoning district, except for RR, AG, A-1, and R-1.	(15) (14) Raising of horses, cattle, goats, sheep, poultry and rabbits is not permitted in any residential zoning district, except for RR, AG, A-1, and R-1, and except as provided in Chapter 12, Article III, Division 5, Nonconforming Uses and Structures of this code for nonconforming uses on farms existing on the date this Ordinance is adopted by the Town Council.	The Town can lessen its limitation if it desires, and the Town has to decide as a policy if it desires to lessen this limitation.	Staff needs justification for the necessary related to the recommended language in Column B.	No changes to existing provision.

ADDITIONAL RECOMMENDATIONS:

To maintain consistency throughout, staff recommends adopting the definition of "farm" as delineated in the Florida Right to Farm Act (Section 823.19), as follows:

"Farm" means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products.