

Deerfield Planning Board
July 2, 2008

Minutes

Meeting convened at 7:11 p.m. in Main Meeting Room at Deerfield Municipal Offices.

Members Present: Peter LaBarbera - Chair, Lynn Rose, Roger Sadoski, John Waite

Members Absent: John Baronas, James Paciesnik, Elizabeth Schmitt

Also Present: Attorney Mark Bobrowski.

Review of Zoning By-laws

Mr. LaBarbera explained that the purpose of the meeting was to begin a review of the zoning bylaws with the goal of reworking them to allow Deerfield to deal proactively with anticipated commercial development. He reported that a recent request to have two parcels rezoned from Industrial to Commercial had made it clear that the Board was being forced to address zoning issues reactively and in a piecemeal fashion, rather than from a position informed by best practices and by the priorities of the Town. He asked what geographic strategies can be used to discourage unwanted development.

Mr. Bobrowski stated that there is particular hostility toward drive-thru and fast-food establishments. He cited the example of Marion (state?) which does not allow drive-thru's and where there is no Dunkin Donuts, which decided that they could not do without a drive-thru option.

Mr. Waite asked if it is possible to restrict companies by banning drive-thru's. He stated that formula-based companies have an unfair advantage over independent businesses. Attorney Bobrowski noted that Deerfield zoning allows drive-thru's only for ATMs. There was discussion of the Subway Shop, an example of a fast food eatery for which zoning restrictions were not enforced and why that happened. Ms. Rose asked if the existence of Subway sets a precedent that would compromise efforts to control formula restaurants. Attorney Bobrowski stated that it does not set a precedent. There was discussion of what constitutes "fast food establishments" and "formula restaurants". Mr. Sadoski stated that one element is a cookie cutter approach.

Mr. LaBarbera stated that Deerfield needs to preserve its historic uniqueness. Attorney Bobrowski recommended that the Planning Board think of zoning measures that are broad-based, so they can address the range of businesses that are likely to find Deerfield attractive. He noted that the formula-based zoning in Coranado, CA successfully withstood court challenge. He report that most formula establishments are able to do without a drive-through option, but are unwilling to operate without fast food.

Mr. Waite stated that some people in Deerfield would want an Applebee's or Chili's, especially the young people in town. Mr. LaBarbera stated that restrictions do not have to be townwide; they can be located outside of the town center. There was discussion of whether such establishments would survive on the outskirts of town.

Attorney Bobrowski reported that McDonald's successfully fought Falmouths's effort to keep them out. Mr. LaBarbera noted that the Planning Board wants to ensure a level economic playing field for independent businesses. Ms. Rose asked for a definition of formula businesses. Mr. Sadoski gave the example of businesses with a 'cookie cutter' approach. Mr. LaBarbera stated that the only reason that CVS has not approached Deerfield is because there is insufficient foot traffic to make it worthwhile. Attorney Bobrowski noted that there is sufficient traffic to sustain Yankee Candle and Ms. Rose pointed out their proximity to Routes 91 and Routes 5&10 as an important factor in their success.

Attorney Bobrowski stated that Deerfield cannot use zoning to reduce economic competition; but successful zoning can be based on alleged secondary impacts. He cited zoning in Fredricksburg which established a shopping district overlay with a conditional use permit which applied to standardized businesses. The city council was discouraging Domino's, not Joe's Pizza, an independent business.

Mr. LaBarbera noted that the issue is not at a crucial economic point yet. Attorney Bobrowski noted that now is a good time to put zoning in place. The question is whether to apply restrictions throughout town or to allow only in the outlying areas. Mr. LaBarbera suggested limiting certain establishments to just between the exits of Route 91. Ms. Rose said that development would draw people to Deerfield.

Mr. Sadoski suggested that development could occur at the end of Main Street. Attorney Bobrowski recommended that the Planning Board review the zoning map to guide their decision making. Mr. Waite stated that the introduction of a Walgreen's would drastically change the profile of Deerfield. Mr. LaBarbera stated that it is necessary to act in order avoid the risk of a first change, such as that.

The Planning Board and Attorney Bobrowski consulted the zoning map and discussed current restrictions. Franchises are allowed by special permit. Mr. LaBarbera stated that a desire to increase the tax base often influences decisions on franchises. Mr. Waite stated that it is necessary to do some public education on the issues.

There was a general discussion of the special permitting process. Mr. LaBarbera suggested disallowing formula businesses in some categories or districts. Attorney Bobrowski said that the choice is between prohibition and special permitting; there needs to be a responsible response. Mr. LaBarbera questioned whether it should be a general bylaw or a zoning bylaw. Mr. LaBarbera cited the approval of Cingular Wireless establishment as an example of spot zoning, which the Board wants to avoid.

Mr. Waite stated that there is need for local self-reliance in Deerfield. Mr. LaBarbera stated that there is little that is really local. Mr. Waite cited the decision of Walmart to sell local produce. Attorney Bobrowski observed that the whole concept of globalization is taking a hit.

Mr. Sadoski stated that some residents are moving out of town and that the Planning Board needs to point the town in a good direction. He suggested the need to exclude cookie cutter food establishments, such as Dunkin Donuts. Ms. Rose raised the issue of the tax base. Mr. LaBarbera asked whether franchise establishments would hurt or help the tax base in Deerfield. Mr. LaBarbera noted that special permit applications often stress the potential benefits to the town's tax base.

There was discussion of appropriate uses of the \$10,000 that Town Meeting authorized for a review of the Commercial zoning. There was discussion of issues to be reviewed:

1. what is allowed by right in commercial district
2. relics – for example, housing on land that is commercially zoned
3. small parcels accessible only to formula businesses
4. aesthetics
5. secondary problems
6. traffic
7. size specified in various districts
8. size and height of buildings

Mr. LaBarbera asked Planning Board members if they wanted to proceed with the review of the zoning bylaws. Mr. Waite said that he wants more information from Attorney Bobrowski in order to decide. Attorney Bobrowski raised the issue of grandfathered uses. He recommended a walk

through districts in order to see what is there. Mr. LaBarbera said that it is important to be aware of inconsistencies between zoning and actual uses. Attorney Bobrowski stressed the need to address what is not allowed, but exists. Mr. Waite asked if it would be possible to add formula restaurant as a banded use.

Attorney Bobrowski said that it is important to pick apart the Use Table Column for each district; and to look at the issue of consolidating parcels. Mr. LaBarbera stated that it is important to help diversify the district. He said that formula-based development will allow things to crystallize around it. What should be the focus of the review?

Mr. Waite moved that the Planning Board explore the possibility of adding restrictions on formula-based (F-B) businesses to the zoning bylaw by establishing criteria by which a F-B business would be allowed or disallowed. Ms. Rose seconded the motion. The motion was passed unanimously: 4, 0, 0

Attorney Bobrowski stated that he would provide a memo with a menu of options by the third week of July 2008 and that he would use the Planning Board's responses to the memo to guide his drafting of proposed zoning bylaw changes. Attorney Bobrowski stated that he will meet with the Planning Board again during the first week of September 2008 to discuss next steps. Attorney Bobrowski stated that he would like to see revisions to the Zoning Bylaw brought to the 2009 annual Deerfield Town Meeting and that he will endeavor to keep costs down in order to help make it possible.

Mr. LaBarbera stated that the full expense of reviewing the zoning bylaws will exceed the \$10,000 authorized by Town Meeting and that the Planning Board will need to request more.

Attorney Bobrowski suggested that the Planning Board decide whether they want to prohibit formula-based businesses or expand the Use Table.

The meeting ended at 9 p.m.

Respectfully submitted,
Karen Herold