

**TOWN OF FARMINGTON  
PLANNING BOARD  
Tuesday, November 1, 2011  
356 Main Street, Farmington, NH**

**Board Members Present:** Paul Parker, David Kestner, Glen Demers

**Board Members Absent:** Charlie Doke, Cindy Snowdon

**Selectmen's Representative:** Charlie King

**Town Staff Present:** Director of Planning and Community Development Kathy Menici, CEO  
Dennis Roseberry and Department Secretary Bette Anne Gallagher

**Public Present:** Neil Johnson, Randy Orvis, Dave Connolly

**At 6:04 pm the meeting was called to order and all present stood for the Pledge of Allegiance.**

**BUSINESS BEFORE THE BOARD:**

- **Review and approve Minutes of October 18, 2011**

*Charlie King motioned to approve the October 18, 2011 minutes as written; 2<sup>nd</sup> David Kestner. Motion carried with all in favor.*

- **Update on Grandfathered Status of Malcolm Bradsher Excavation Site – R-14 Lot 12**

Planner Menici reviewed that at the last meeting she had provided a letter to the Board that supported the grandfathered status for this parcel. Earlier this year Mr. Bradsher received approval for a new 155-E permit for this lot. Subsequent to the approval Mr. Bradsher located a copy of the report submitted to the Town on August 1, 1991 confirming the grandfathered status of the lots. The authenticity of the document has been verified.

Town Counsel had suggested two options and the Board asked the Planner to speak with Mr. Bradsher regarding his preference:

1. Issuing a letter to Mr. Bradsher acknowledging that the site is grandfathered based on the documentation provided and that as a result he may have greater rights than contained in his approval; or
2. With Mr. Bradsher's agreement, the Board could revoke the 155-E permit that was granted in accordance with RSA 676:4-a. Public and abutter notice would be required, but no public hearing would be necessary unless someone receiving notice requests one or the Board decides to require one.

Mr. Bradsher would like to proceed with revocation of the permit so there is no question going forward as to the grandfathered status.

There is no formal public hearing before the Board required, but a notice will be put in the paper and abutters will be noticed. There is a 30-day comment period for abutters and after that time, the Board will review the comments, if any, and based upon them either revoke the permit or keep it in place. Mr. Bradsher will pay the necessary costs.

Mr. Bradsher will file a letter with the Town requesting this action to take place. Although no formal public hearing is required, the Board will make a finding for the record as to the grandfathered status.

- **Update on the Pike Industries Paulson Road site – R-35 Lot 7**

Chairman Parker asked the Planner to bring the Board up to date. She stated that during the September site walk on the Paulson Road site, it had been noted that one of the two wetlands had a small breach in the embankment that created a channel. At the October 18th meeting, Pike agreed to the Board's request to repair the breach. Pike hired a local excavator who apparently misunderstood the directions and instead of repairing the breach, cleaned out the wetlands area removing vegetation and putting in drainage. This removed the newly created wetlands in front of the breach. Pike notified DES and is working with them to resolve the problem. Copies of the incident report and photos were sent by Pike to Planner Menici. The Planner said no action is required by the Board.

The Board asked Randy Orvis to address the issue. Mr. Orvis said this is probably a six-month process. DES will issue a letter of deficiency to the excavator requesting a restoration plan and allow a couple of months for receipt. Once restoration is complete, DES will issue a monitoring report, probably next June, and another in the fall with a yearly report after that. Eventually a letter of compliance will be issued. The excavator is responsible for the restoration but will probably not be fined unless there has been a pattern of this type of damage. Mr. Orvis also said that it appears that prior to the breach that drained the wetlands this area may have been a vernal pool.

David Kestner asked if the excavation permit would be affected. The Planner will check with Town Counsel and report back to the Board. Chairman Parker asked if the reclamation process would also be affected.

- **Haycock – Estimate for engineering review**

Planner Menici provided information from FST regarding the engineering review estimate requested by the Board. The applicant had not submitted a drainage analysis for the west/northwest corner parking area stating that there was not enough change in the flow of storm water to require a drainage plan. The Board wanted FST to review the applicant's submission and verify whether the position was accurate.

Randy Orvis spoke on behalf of Mr. Haycock stating that the cost estimate was unacceptably high for a review. Mr. Orvis said the original work took 19 ½ hours and the FST review was projected to take 24 hours with 3 levels of review. In his opinion FST appeared to be doing the work over instead of a review at a cost of twice what the applicant paid for the original work.

Chairman Parker said the Board had been clear about the scope of the review. Charlie King said FST was off the mark as to what had been requested of them and thought about 8 hours should be sufficient for the review. David Kestner reminded the Board that they had also requested an opinion about swales off the front parking area.

Charlie King asked the Planner to speak with FST and obtain a more targeted estimate with specifics as to exactly what would be done and then get approval from the applicant. Planner Menici said she wasn't sure she would have this by the November 15<sup>th</sup> meeting. Chairman Parker stated and the other members agreed that the matter would be continued if necessary.

At 6:30 Paul Parker suggested that the remaining Board business be tabled until after the public hearings.

***Charlie King motioned to table discussion on the zoning ordinance amendments and continue with Board business at 7:00 pm after the public hearings; 2<sup>nd</sup> David Kestner. Motion carried with all in favor.***

Planner Menici asked that the Board discuss the Coppola matter prior to the public hearings because CEO Roseberry was present specifically for this discussion.

- **Discussion regarding Coppola application (R-20 Lot 7) – to determine if a variance is necessary where a Special Use Permit is required.**

The Planner asked CEO Roseberry to speak to the subject because she had not been involved in all of the discussions.

The CEO said the Town Administrator had met with him to discuss an issue brought to the attention of one of the Selectmen by a party to this application. There had apparently been an oversight during the review of this application by department staff. CEO Roseberry explained that he did not see the plans with regard to the proposed addition with relation to the wetlands and buffer zone until after the Planning Board's October 18<sup>th</sup> meeting. After reviewing the plans, the CEO said he determined that a variance would be necessary.

CEO Roseberry said that when he initially met with the real estate broker, all the questions posed to him were about the structure of the proposed addition and the handicap ramp and his responses were based upon the questions posed. He was not given any plans for review at that time. He explained that the special use permit is required based upon the table of permitted uses. In retrospect, the CEO said it would have been appropriate to review the plans together with the applicant's representative and the Planner.

The applicant currently has a variance application as well as an appeal of administrative decision before the ZBA scheduled for a hearing at the November 3<sup>rd</sup> meeting.

During the ensuing discussion of the requirements to be met for the wetlands overlays, Randy Orvis questioned the designation of the wetlands as Class I stating that to his knowledge Farmington had never designated any Class I wetlands. It appeared that the applicant labeled the wetlands as Class I however, if the wetlands are not Class I than no variance would be required. Planner Menici will speak with the applicant's agent to determine why the wetlands were labeled as Class I. David Kestner commented that it might have been mistakenly based upon the Cocheco reclassification.

Dave Connolly asked that the Conservation Commission be advised of the outcome since Coppola Physical Therapy will be before them on November 16<sup>th</sup> regarding a Special Use permit.

***Paul Parker motioned to table "Other Board Business" until after the public hearings; 2<sup>nd</sup> Charlie King. Motion carried with all in favor.***

**PUBLIC HEARING 7:00 PM**

**2<sup>nd</sup> PUBLIC HEARING - Proposed Amendment to the Planning Board's Rules and Procedures to Adjust Abutter Notification Fees.**

Chairman Parker stated that the changes formalize the posting and publication processes and update the fees from \$9.00 to \$6.00 to reflect the elimination of the return receipt requirement.

*Charlie King motioned to adopt the changes to the Planning Board's Rules of Procedure and the fee schedule; 2<sup>nd</sup> Glen Demers. Motion carried with all in favor.*

**2<sup>nd</sup> PUBLIC HEARING - Proposed Amendments to the Town of Farmington Excavation Regulations and Application to Delete References to Renewal Process and Renewal Permit.**

Chairman Parker said this was the second public hearing for the proposed change and Charlie King motioned to adopt but then withdrew his motion because the Board realized that there were additional references that needed to be changed.

*Charlie King motioned to amend the changes to remove all fees and direct the applicant to the fee schedule; 2<sup>nd</sup> David Kestner. Motion carried with all in favor.*

*David Kestner motioned to continue the Public Hearing on the proposed amendment to December 6, 2011; 2<sup>nd</sup> Charlie King. Motion carried with all in favor.*

*Glen Demers motioned to adopt the proposed amendment to the Excavation Regulations and Application to remove all references to renewal; 2<sup>nd</sup> Charlie King. Motion carried with all in favor.*

*At 7:12 pm David Kestner motioned for the Board to take a 5 minute recess; 2<sup>nd</sup> Charlie King. Motion carried with all in favor. At 7:27 pm the Board reconvened.*

**BUSINESS BEFORE THE BOARD CONTINUED:**

- **Discussion regarding proposed Zoning Amendment – Small Wind Turbines**

The Planner said the example she had provided to the members in their packets was a copy of an ordinance drafted for another community that had concerns similar to Farmington with respect to not being over regulatory or prohibitive. She said it was provided as a starting point for discussion in formulating an ordinance that would work for the Town.

Chairman Parker said he would read each section and then members could comment:

- A. Purpose – Okay as written
- B. Definitions – Okay as written
- C. Standards

1. Zoning Districts – Should read *Small Wind Energy Systems are permitted in all districts when requirements of this Zoning Ordinance can be satisfied.*
2. Maximum Height – Suggestions were made to use 30 feet above the tree line, to use the height of the predominant species, to keep in conformity with cell towers and say not to exceed 190 feet and to use 30 feet above the average height of nearby obstructions including the tree canopy. The Planner said she would research further and report back to the Board on November 15<sup>th</sup>.
3. Setback – After discussion suggestion was 110 percent of the system height from the property line for abutting undeveloped lots and 150 percent of the system height from the property line for abutting occupied structures.
4. Maximum Sound Level – The Board was concerned with who establishes the decibel level. The Planner said all manufacturers do sound testing and supply this information with the unit. After some discussion, Planner Menici suggested that this section should be simple for the applicant and suggested that it read *Sound levels shall not exceed 55 decibels as measured at the property line.* The Board agreed with her suggestion.
5. Shadow Flicker – The Board questioned how the Board would be able to arbitrate the impact of shadow flicker on abutters. Charlie King if there were any tools available or if there were requirements that would assist the Board in making a determination.

David Kestner suggested that the expert from OEP be asked to provide some guidance to the Board on this section. The Planner said it would be when the shadows are the longest. She will contact Eric Steltzer for additional information and report back to the Board.

6. Signs – The purpose of the sign standard is to prevent the wind turbine structure from becoming an advertising structure. Charlie King commented that these systems should not be billboards. It was agreed to make restrictions specific to commercial advertising.
7. Visual Impacts – Of the 4 subparagraphs in this section, Planner Menici suggested that the most thought be given to (c) and (d). Paragraph (c) addresses color and that it should be unobtrusive. Paragraph (d) addresses artificial lighting. The Planner said a situation arose in Alton with a cell tower that had lights installed without PB permission. The FAA took note of the lights, used them and now the lights cannot be eliminated. She said on some nights the light casts an eerie glow on a good portion of Alton Bay. Some suggestions were to keep lights at 10 to 20 feet below the tree line and to require low lumens. Paragraph (b) requiring that electric be underground was removed. Paragraph (c) will not require specific colors just non-reflective and unobtrusive color. Paragraph (d) was okay.
8. Access – Okay as written.

D. Abutter and Regional Notification and E. Abandonment are Okay as written.

Charlie King said that although these systems will be under the CEO's administration, he felt that some should come before the Planning Board. Planner Menici said that the systems below 100 kW could be reviewed by the CEO, those between 100 kW and 300 kW could be reviewed by the Board but nothing would prevent Planning

Board review of all applications. Paul Parker suggested using the Site Plan Review Committee and if the Committee could not agree then the application would go to the Board. Charlie King agreed with that suggestion.

Planner Menici suggested that systems from 1 kW to 30 kW would go to the CEO and over 30 kW would go to either Site Plan Review Committee or the Board.

The Board suggested using different setbacks under standards as discussed with the possibility of higher setbacks for larger systems. It was brought up that below 1 kW should not need any permit, but the Planner said that is not allowed under State statute but the BOS has the authority to set fees and these could be free.

Neil Johnson asked about requirements for multiple towers. The Planner said that would be a wind farm and fall under the State's jurisdiction.

*Charlie King motioned to continue the discussion on Small Wind Turbines to the December 6<sup>th</sup> workshop meeting; 2<sup>nd</sup> Glen Demers. Motion carried with all in favor.*

- **Discussion regarding proposed Zoning Amendment – Housing Maintenance and Occupancy Code**

*David Kestner motioned to postpone this discussion to the December 6<sup>th</sup> workshop meeting; 2<sup>nd</sup> Charlie King. Motion carried with all in favor.*

- **Any other business to come before the board.**

Planner Menici said the Conservation Commission report on their annual site walk of the easement at Energy Resource Group indicated the Commission had no complaints on the easement.

Glen Demers asked for a status on 498 Main Street. Planner Menici said the contractor is pouring footings in the basement for the 2<sup>nd</sup> floor steel structure.

*At 9:04 pm David Kestner motioned to adjourn; 2<sup>nd</sup> Charlie King. Motion carried with all in favor.*

Respectfully Submitted,  
Bette Anne Gallagher  
Department Secretary

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Chairman, Paul Parker