

**TOWN OF FARMINGTON
PLANNING BOARD MEETING
Tuesday, January 8, 2013
356 Main Street, Farmington, NH**

Board Members Present: Paul Parker, David Kestner, Glen Demers, Joshua Carlsen, Matt Scruton
Selectmen's Representative: Charlie King
Board Members Absent/Excused: Charles Doke, Cindy Snowdon
Town Staff Present: Director of Planning and Community Development Kathy Menici,
Department Secretary Bette Anne Gallagher
Public Present: Neil Johnson

At 6:06 pm Chairman Parker called the meeting to order and all present stood for the Pledge of Allegiance.

BUSINESS BEFORE THE BOARD:

- **Pledge of Allegiance**
- **Chairman Parker seated Matt Scruton in place of Cindy Snowdon**
- **Review and approve Meeting Minutes of December 18, 2012**

David Kestner motioned to approve the minutes of December 18, 2012 as amended; 2nd Matt Scruton. Motion carried with 4 in favor and 1 abstaining

- **Continued discussion of revisions to Subdivision Regulations**

The Planner reviewed for the Board that their last discussion was on October 2, 2012. At the October 16, 2012 meeting they were given Draft 3 dated October 5, 2012 that incorporates all changes from the April through September meetings. She hoped that all the members had an opportunity to look through the draft as the next step would be the final form. She said the draft is still in a cut and paste format as it combined material from the existing regulations and some model regulations presented to the Board by an interim town planner. Planner Menici said that the one area she knew required further discussion was cemeteries. The language proposed in the model regulations in paragraph 16 reads:

“The subdivision plan shall show any burial site or cemetery as a separate lot from the remainder of the subdivision by means of a fence or stone wall. This fence shall be placed not less than twenty-five (25) feet from any grave, monument, or tomb and will be shown on subdivision plans accordingly.”

Planner Menici said that this was the one item on which the Board had not yet reached agreement. State statute requires that no development or disturbance of ground occur within 25 feet of a cemetery. The proposed language had been taken from the model regulations.

At this point Charlie King arrived and was seated.

Chairman Parker said the Board had previously talked about putting markers on the corners. Charlie King said that some of these plots have existing fences or stone walls that might not be 25 feet and asked about

responsibility for maintenance. Planner Menici said that the family who has members buried there would be responsible if it is a separate lot but if not separate then the person owning the lot would be responsible.

David Kestner asked about the issue of maintaining access to a separate lot. The Planner said that deeded access must be provided and would require an easement to pass and repass but it does not have to be vehicle access. Charlie King proposed that this be a requirement shown on the subdivision plan so that there is no disagreement later. David Kestner suggested showing the access with a dotted line. It was agreed that a pedestrian walkway would be the minimum required. Planner Menici said because this is in the Subdivision Regulations and not in the Zoning Ordinance the language can be general. She will have it reviewed by Town Counsel to ensure compliance with State law.

Planner Menici said she would present the revised document at the next meeting and asked if there were any other issues. There were none. Chairman Parker asked if a date for public hearing should be set. The Planner suggested that the final draft should be formatted prior to presentation to the public for a hearing.

Charlie King asked how it would work if an owner wanted a cemetery to remain on his parcel when subdividing. The Planner said the applicant could submit a waiver request with the application and that State statute does not require a separate lot when subdividing. She said the Board could review the requirement on a case by case basis if a waiver is requested. David Kestner asked if the Board could require a parking area because if there was a long driveway then contingencies must be made so family members could retain accessibility. The Planner said that could be a condition of approval.

After brief discussion it was agreed to add a separate paragraph requiring deeded access to be determined on a case by case basis based upon individual needs or the individuality of a parcel.

Based upon an experience in another town, Planner Menici said there needs to be a way to identify the 25 foot setback required under State statute. She said that in that town's situation a leach field encroached into the 25 foot setback of an historical cemetery. The Planner said that in order to avoid that type of situation monumentation is needed and asked the members if they felt a fence or stone wall would be appropriate.

The Board agreed that since existing fencing might already be in place and much closer than 25 feet then requiring a fence could result in two fences. It was decided that granite monuments at all four corners would be appropriate. Glen Demers brought up the possibility that if the cemetery was close to the road then the 25 feet could be into the travel way and monuments could not be used. Chairman Parker said under those circumstances the applicant could request a waiver.

Chairman Parker said if there was further discussion it should be tabled to the end of the meeting because it was 6:30 pm and the public hearing should be started. It was decided to continue for a few more minutes to complete the discussion. Planner Menici asked for a motion to have the Subdivision Regulations prepared in final form for presentation to the Board on February 5, 2013.

David Kestner motioned to continue the discussion of the final form for revisions to the Subdivision Regulations to February 5, 2013; 2nd Charlie King. Motion carried with all in favor.

Chairman Parker motioned to table any other business to the end of the meeting; 2nd Matt Scruton. Motion carried with all in favor.

- **Review of final drafts of proposed zoning amendments, proposed warrant articles, and establish public hearing dates**

Chairman Parker read the notice as follows:

The Farmington Planning Board will hold a public hearing on proposed zoning amendments on January 8, 2013 at 6:30 p.m. at the Municipal Office Building, 356 Main Street, Farmington. A summary of the proposed zoning amendments is provided below; the full text of the proposed amendments is on file for public inspection at the Farmington Planning Department, Municipal Office Building, 356 Main Street, Farmington.

1. To amend Section 3.09 – Signs to extend the time period during which political signs may be displayed, to clarify standards that apply to temporary signage and signs with messages or graphics that change electronically, and to add language permitting directional signage for agriculture enterprises and standards for said signs.

The Chairman said that Planner Menici had provided copies of the emails from Town Counsel as well as a draft copy of the proposed zoning ordinance.

Planner Menici summarized that at the Board's last discussion they were trying to find a way to regulate campaign signs not for content but for the time frame during which they can be displayed. Chairman Parker said he felt that there was some confusion as to whether campaign signs would be protected under freedom of speech.

All the other members agreed that all signs are protected under freedom of speech. Planner Menici said that Town Counsel's opinion on this matter has been consistent and the research she has done on line is also consistent.

The Chairman said that in her last email Town Counsel stated that referring to the State law would be the easiest thing to do and he agrees.

Planner Menici said the emails should be looked at in context of the entire discussion that started on December 19th when she emailed questions to Town Counsel. Town Counsel stated that "Interestingly, the state law (RSA 664:17) has not been enforced for many years for the very reason that the US Supreme Court has provided that political signs cannot be treated differently than other signs." The Planner said that the statement must be taken in its entirety. She expressed her concern that the Chairman appeared to be trying to find a way to regulate something that Town Counsel advises that the Board does not have the authority to do.

She added that based upon the reading she has done there are papers written and published by law schools on this matter and the ACLU has also jumped in on the topic. All are in agreement that an attempt to limit someone's ability to post political signs and treat these signs differently from other temporary signs infringes on their liberty. Town Counsel says to treat all signs the same and state the standards. She confirmed that Draft 5 contained Town Counsel's recommendations. Chairman Parker asked her to highlight the changes.

Planner Menici went through the document indicating that the deleted language was referenced in the right hand margin. The entire paragraph addressing temporary signs was removed as well as language about permits and traffic control.

Planner Menici said at this point there will be three zoning amendments instead of two with the addition of the definition of temporary signs:

"Temporary Sign: Temporary signs include but are not limited to banners, emblems, portable signs, inflatables, wind signs including balloons, pennants and streamers or any other sign that moves in the wind (excluding national or state flags), political signs or any other temporary advertising media intended to identify or direct attention to a product, service, place, activity, special event, or business."

Paragraphs (B) (1) and (2) were read.

David Kestner expressed his concern that a Catch 22 was being created by confusing language. He felt that paragraph (1) should end halfway through at "...a temporary sign permit must be obtained" and the rest of the paragraph should be deleted. The Planner said that should not be deleted because it contained provisions on size requirements and permission of the property owner. She suggested saying they are not subject to the permit requirement but are subject to the other provisions of 3.09 (B) (1) those being size, permission and removal.

David Kestner suggested separate paragraphs. The Board discussed ways to do this so the requirements would be clear including making the exemptions a separate paragraph. The Planner said the court cases were clear that the provision for no more than 90 days per calendar year should be in one section.

After considering different ways to present the amendment the Board decided to separate the information into four paragraphs:

- Paragraph 1 in section B would be temporary signs are permitted for 90 days;
- Paragraph 2 would say that one temporary sign per approved entrance is allowed, not to exceed two temporary signs at one time except as provided in 3.09(B)(4). A temporary sign permit must be obtained prior to the installation of the temp sign. Permit applications are available in the Code Enforcement Office;
- Paragraph 3 would state the maximum surface area not to exceed 32 square feet, permission from owner necessary and removal within 15 days of the special event or activity, where applicable;
- Paragraph 4 would be the current Paragraph 2.

Charlie King said that the Board is trying to rewrite this ordinance for better control over temporary sign abuses but he wondered if it would result in staff having to chase everyone for every sign. His opinion was that they should state the 90 day time limit and then concentrate on the serious offenders. Planner Menici asked how the signs will be documented without a permit since that is the difficulty now.

She brought up that one of the driving factors for this amendment was a business that for at least seven months has displayed an internally illuminated sign on wheels for 30 days and then will remove it overnight and start the 30 day clock again. This temporary sign has now become a permanent sign.

Charlie King said that under the proposed amendment the business would now have a total of 90 days per calendar year and the violation could be documented and then the Town can call them on the carpet. He felt that staff should deal only with abuse of the ordinance.

Planner Menici said the point is how the CEO is going to document a violation unless a temporary sign permit is on file. She added the permit reinforces that the Town is serious about enforcement. However, she said that the decision to require a permit is up to the Board.

Chairman Parker said there should be standards and a permit would document the time.

Planner Menici said that the CEO's concern is that he does not have a way to document and if the zoning ordinance contains language such as this when he has a complaint on a sign he has a way to check. If no permit has been filed then he is able to contact the owner with the requirement. He does not intend to chase people down but this would give him a fallback when a complaint comes in.

Charlie King said if the CEO gets a call from a neighbor that a sign has been up over three months the complaint puts a mark in the sand. He also felt that realistically only four or five in Town are in violation. However, the Planner said there are more in violation than that. She also said some of these signs become permanent. However, this proposed amendment is more lenient than the current one because it gives 90 days instead of 30 days.

Charlie King said if this is voted in without the permit requirement and the CEO still has trouble then next year the Board can institute the permit. He felt the permit requirement would create more work for staff. David Kestner said that the documentation will only exist if an individual pulls the permit otherwise it is a moot point. Planner Menici said that happens now with building permits but eventually people do get caught. David Kestner added that if the Town can get people to pull permits it will give the CEO the ability to document and start the clock ticking and that this would be better than nothing.

Glen Demers and Josh Carlsen agreed with tonight's changes to the zoning amendment. Matt Scruton said people are always creative in finding ways to get around a regulation and said some put a sign in the back of a pick up or on a trailer. The Planner said there is case law about that issue.

Chairman Parker read the remainder of the proposed amendment. Planner Menici said (D) and (E) are existing and (F) is the directional signage discussed at the last meeting. Section F was amended by motion at the prior meeting and the Planner will make the necessary changes.

At 7:25 pm David Kestner motioned for a five minute recess; 2nd Charlie King. Motion carried with all in favor. Meeting reconvened at 7:36 pm.

Chairman Parker opened the meeting to public comment.

Neil Johnson asked for clarification about whether a sign stating "Save the Whales" would be considered political and if he changed the sentiment after 90 days would it be considered a new sign. He asked if the 90 days is based upon the sentiment or the sign itself. Planner Menici said the intent of the regulation is the physical sign itself.

Mr. Johnson said he is troubled that the exercise of free speech by putting up signs on private property is being infringed upon by the Town allowing only 90 days. He said that protection of free speech doesn't seem to be covered in any aspect of this proposed ordinance.

Chairman Parker said it was not the original intent to cover signs making political statements. However, Mr. Johnson pointed out that it has morphed into it. He asked what would happen if he put up a sign in April that had nothing to do with an election. The Planner said that Town Counsel's point is that all temporary signage is treated the same and the proposal is to allow 90 days per calendar year instead of the 30 days currently allowed.

The Chairman used as an example a sign quoting a psalm and that it is limiting to restrict it to only 90 days. Planner Menici said it is proposed as 90 days per calendar year.

Matt Scruton asked what enforcement mechanism the Town would actually use on private property for a sign exercising freedom of speech. The Planner said that with regard to freedom of speech Courts have upheld that a municipality can limit the placement of temporary signs with regard to a reasonable amount of time for them to be in place, the places they can be posted and the manner in which they are posted. Mr. Scruton asked if fines or removal of signs would be the enforcement mechanism.

Planner Menici said that the CEO would send a notice of the violation and give a specific number of days to come into compliance. After that Town Counsel would follow up with another letter to advise them they are in violation of the law and if they do not come in compliance the Town would take necessary legal action stating the fines typically imposed by the Court along with attorney fees. Mr. King said that was \$275.00 per day and the Planner said it could be as high as \$550.00 per day.

After additional discussion the Planner restated that staff has made recommendations and it is up to the Board to decide what direction in which it wants to go in this first public hearing and they then have the opportunity to make changes to language and present the changes at the second public hearing. The Board can then make a determination as to final language or table all together. Charlie King said he feels they must go forward because

of the political versus temporary sign issue. Chairman Parker said that ultimately it is up to the voting public to approve or deny the amendment.

The Planner said to look at the definition of temporary signs and the Chairman read it again. Mr. Johnson said a sign stating for instance "someone has big feet" was not addressed. The Planner said that would not be a temporary sign so it would not be subject to the limitations of temporary signage.

David Kestner asked if Town Counsel was okay with the definition as presented. The Planner said she was. Glen Demers said the Board should move forward with this amendment and see what the creativity of residents brings.

Chairman Parker said if there are no changes next time the amendment can go to the warrant for public vote. The Planner said the revisions will be made and posted as of tomorrow, January 9th.

Glen Demers motioned to continue the discussion on signage to the next public hearing on January 22, 2013 at 6:30 pm; 2nd Josh Carlsen. Motion carried with all in favor.

2. To amend Section 3.13 – Manufactured Housing Standards to define manufactured housing, to clarify where manufactured housing units may be located, and to identify standards with which manufactured housing units must comply.

Planner Menici said that the only thing that came up was a discussion about having a subdivision becoming a mobile home park because that is not permitted in town nor is the expansion of existing mobile home parks allowed. At the Board's request Planner Menici checked with Town Counsel about language for condominium or condominium developments. Her response dated January 2nd was that it is a form of ownership and not a thing RSA 356-B:5 provides that no condominium may be treated differently by any ordinance which would permit a physically identical project or development under a different form of ownership. The Planner said the only thing the Board could do would be to include that no more than one mobile home unit may be sited on a single lot. This however could raise another issue such as if an owner wanted to site another mobile home unit on his property for adult children. That would be allowed now but with this language it would not be allowed. She said if this is of concern to the Board the change would be the only legal way to address it and as stated would create other issues.

Charlie King said he does not have a problem with leaving it as drafted and the Chairman read it as proposed. He asked the other members if they wanted to add Town Counsel's proposed sentence or leave it out. He said it would prohibit a six acre lot that satisfies all other requirements from adding a second mobile home. Mr. King said it would not however prohibit a stick built home.

David Kestner said there are pros and cons for either way but the whole jist is to try to improve, at the request of the CEO, the housing standards due to building code standards. He said he would reserve his decision until he listened to the other members.

Glen Demers said to leave it in; Josh Carlsen said to take out. Matt Scruton said he would like to hear from the public.

Chairman Parker opened the discussion to public comment.

Neil Johnson said it sounded reasonable to him and as an example the lot could still be subdivided and a mobile home put on that lot.

Chairman Parker said the only down side he sees in not being able to add a mobile home when there is an existing one unless subdivided or a variance obtained. It does not restrict modular homes just mobile homes.

David Kestner said to take out using duplexes as an example. He said that if the Town currently allows duplexes as long as they can meet lot requirement no matter where they are within zoning then a second mobile home should be allowed. He said this is being considered only because of the issue of improving the percentages of

housing stock. He said the owner will end up paying additional taxes because there are huge differences between taxes on a mobile home and a stick built home.

Planner Menici said that is part of the reason for the change in the ordinance and that given the percentage of dwelling units in town that fall into the manufactured housing category the Town is trying to encourage the development of other types of housing.

Charlie King motioned to add the recommendation of Town Counsel to add a sentence to Section 3.13; 2nd Glen Demers. Motion carried with 5 in favor and 1 against.

The Planner asked the Board to clarify that they have accepted Draft 3 of Manufactured Housing Standards as presented.

Charlie King motioned to post the proposed amendment to Section 3.13 for an additional public hearing on January 22, 2013 at 6:30; 2nd Josh Carlsen. Motion carried with all in favor.

A third public hearing was discussed and Planner Menici said that if the Board waits until January 22nd to decide there would be no time because of statutory time constraints. The last day to hold the public hearing is February 4th and if the notice must be published no later than January 22nd. She answered the question about cost stating that it would be between \$125.00 and \$150.00.

The Board agreed to schedule the third public hearing.

Charlie King motioned to post a public hearing for February 4, 2013 for the three proposed zoning amendments; 2nd Josh Carlsen.

Discussion: Monday the 4th is the last day to hold the third and final hearing. It was decided to change the meeting date to February 4th instead of February 5th.

Motion carried all in favor.

David Kestner motioned to change the Planning Board February workshop meeting from February 5, 2013 to February 4, 2013 at 6:30 pm for the third public hearing; 2nd Josh Carlsen.

Discussion: The Chairman asked if anything else was scheduled. Planner Menici said it this was a workshop meeting with nothing else scheduled.

Charlie King called the question. Motion carried with all in favor.

Chairman Parker asked the members to review the attendance sheet from 2012 and make sure it is correct because it will be given to the Board of Selectmen.

At 8:30 pm Matt Scruton motioned to adjourn the meeting; 2nd Glen Demers. Motion carried with all in favor.

Respectfully submitted,
Bette Anne Gallagher, Department Secretary

Chairman, Paul Parker