

**TOWN OF FARMINGTON
PLANNING BOARD MEETING
Tuesday, October 22, 2013
356 Main Street, Farmington, NH**

Board Members Present: Paul Parker, David Kestner, Glen Demers, Martin Laferte

Selectmen's Representative: Charlie King

Board Members Absent/Excused: Charles Doke, Joshua Carlsen

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

Public Present: Neil Johnson, Jack Mettee, Randy Orvis, Shawn O'Brien, two
unidentified individuals

BUSINESS BEFORE THE BOARD:

- **Pledge of Allegiance**

At 6:05 pm Chairman Parker called the meeting to order and all present stood for the Pledge of Allegiance.

- **Review and approve Meeting Minutes of October 1, 2013**

Charlie King motioned to approve the minutes of October 1, 2013 as written; 2nd David Kestner. Motion carried with all in favor.

- **Continued discussion of High Density Development Node**

Jack Mettee passed out an agenda detailing the six items he wanted to discuss with the Board. They were:

- Engagement Plan update
- Final Route 11 TIF Boundary
- Route 11 Zoning Audit
- Preliminary Zoning Thoughts
- Discussion of TIF/79-e
- PB Calendar

Mr. Mettee said the time for submission of surveys had closed. The results are being tabulated and will be ready for the Board to review in two weeks. He said he spoke with Planner Menici about a number of items and would like to reserve the next meeting for in depth discussion with the Board.

He advised that there has been little success in setting up meetings with the local churches. On the advice of the Chairman, Mr. Mettee had contacted the Superintendent of Schools to set up a meeting but without success. He will try to engage the principals of the various schools instead.

Mr. Mettee said at the last meeting he attended there were a number of questions that the Board intended to discuss at a subsequent meeting due to some absent members. Included is the Route 11 boundary, whether or not Route 11 should be an overlay or a carved out district, and access management.

Chairman Parker said the Board had decided on using an overlay district. Mr. Mettee pointed out that the Board should consider that this will result in three zoning areas in that district: the underlying zone, the CIBO overlay and the new overlay on top. He said this may lead to some confusion. The Chairman said the Board felt an overlay would provide more opportunities and flexibility so that if the overlay turns out to be not quite the way they envisioned then corrections could be made more easily.

The next item discussed was the boundary for the TIF district. Mr. Mettee said he needed a final decision with regard to the Suburban Residential properties that the Board had added to the original map.

Planner Menici said the Board should give this a lot of consideration. She said the initial map submitted to the Board pretty much followed district boundaries to avoid including the Town owned parcel zoned SR as well as the parcels on the easterly side of Route 153 up to the Phase 3 property that are zoned SR. She suggested that the district follow existing zoning lines for the high density development district or consider rezoning those areas.

Chairman Parker asked what the concerns would be if the properties that are currently zoned SR are not rezoned but are included in the district. The Planner said that the downfall would be that the development activities hoped for would not be accomplished. She said that if the parcels are included and left SR and not commercial then owners will continue to divide their parcels into 1 acre lots because they think it is easier to sell the small lots. This is what has happened to Route 11 over time.

Planner Menici said that one of the challenges being faced on Route 11 are the pre-existing, non-conforming small lots on Route 11 created because owners subdivided parcels into smaller pieces which were conforming at the time in order to achieve easier sales. As a result Route 11 is pretty chopped up and if a developer comes in with a significant project he/she would have to deal with a number of owners instead of one.

In this new district if the parcels are included and left as SR they can be subdivided into one acre buildable lots which may be one and one-half acre after wetlands and setbacks are taken into consideration.

She explained that as the district was modified by the Board some of the parcels are SR and the Board must decide if they want to leave them that way or as part of the high density commercial district. If yes, then it is in the long term best interests of development to rezone the parcels as commercial business.

After discussion the Board came to the consensus that the parcels currently included and zoned SR should remain in the proposed district and be rezoned as commercial business.

Mr. Mettee said only a few minutes remained for his discussion with the Board. The Chairman asked Randy Orvis if it was acceptable to him to delay the public hearing for about 15 minutes. Mr. Orvis did not object.

With regard to his thoughts on planning and zoning, Mr. Mettee suggested:

- Building some flexibility into permitted uses to accommodate both the small and large parcels
- A variety of uses can be accommodated by Conditional Use Permits and requiring additional standards
- Consider dimensional standards and what works for setbacks

Both HRCU and Farmington Family Care have landscaping in front and parking on the side or in the rear. They add quality to Route 11 and that kind of approach should be duplicated.

- What can be done with Collins Aikman
- Adding architectural standards to the Site Plan Review Regulations so that if necessary to change can be done by public hearing process and not Town meeting

Mr. Mettee said he will have a draft for the Board's review ready for the next meeting and a lot of time can be spent going through it.

Referring to his hand out, Mr. Mettee described the process and procedures for establishing a TIF district. He said it involves a lot of work much of which will be done by Planner Menici but the Board has the task of review. He pointed out that the number of meetings within the time frame to accomplish both the zoning piece and the public hearings is limited and suggested either extra meetings or devoting a block of time longer than 30 minutes during a workshop meeting.

At the November 5th Workshop Meeting the results of the resident survey will be discussed and Mr. Mettee will have the first draft of the zoning overlay. David Kestner said the members should read the material and be prepared for the discussion. Chairman Parker asked that if Mr. Mettee had any additional material that would be helpful to the members to please pass it on to the Planner so it can be read prior to the meeting.

Planner Menici said she wanted the Board to understand that not everything has to be done for the public hearings on the zoning amendments in January. The TIF hearing doesn't have to be a Planning Board public hearing and doesn't have to follow the same calendar as the zoning amendments. The Board can focus on what zoning amendments need to be made to implement the TIF and 79-e and those public hearings can be held at a later date. However, everything must be ready in time for the Town Warrant.

Mr. Mettee said that some of the program requirements can be added to the Site Plan Review Regulations and those amendments can come later.

Chairman Parker said the entire meeting on November 5th will be devoted to working with Mr. Mettee and he anticipated getting a lot done.

Paul Parker motioned to table the remaining two items of Board business until the end of the meeting; 2nd Charlie King. Motion carried with all in favor.

PUBLIC HEARING

Application for Amendment of Conditions of Approval by: Edward Hussey and Roberta Entwistle, applicants/property owners through Geometres Blue Hills, LLC as Agent (Tax Map R38 Lot 8) for property located on Ten Rod Road. The applicants request an Amendment to the Conditions of Approval for the Minor Subdivision approved on January 22, 2013 to allow further subdivision of the parcel. The parcel is located in the Agricultural Residential (AR) Zoning District.

Randy Orvis spoke as agent for the applicants. He said the reason he was here is because one of the conditions imposed in last January's subdivision approval was no further subdivision for 5 years due to having applied for a minor subdivision. Mr. Orvis said he was now proposing to treat this next subdivision as a major and would supply the topographical information that was waived under the minor application.

Mr. Orvis questioned the number of lots that determined a major subdivision stating that under the olds regulations it was three and now it is five. Planner Menici said it had not changed. Under the definitions a major is five or more lots and a minor is not more than four lots for building development purposes, **with no potential for resubdivision**, and requiring no roads, utilities or other municipal improvements.

Discussion turned to the email received from Farmington's Town Counsel in response to the Board's request for information. Charlie King said a copy of the email had been provided to Mr. Orvis so it can now be public information. Chairman Parker asked if the members would like a few minutes to review the email.

At 6:49 pm Martin Laferte motioned for a 5 minute recess; 2nd Charlie King. Motion carried with all in favor. Meeting reconvened at 6:54 pm.

Chairman Parker asked the Planner to summarize Town Counsel's response. Planner Menici said the Board had asked whether or not the Planning Board had the authority to amend the conditions of approval.

Mr. Orvis said he didn't feel the response answered the question. Both Charlie King and David Kestner voiced their disagreement with his opinion.

Mr. King read:

"The Board has limited discretion under Section 15.C of the Town's Subdivision Regulations and RSA 674:36(n) to waive the requirements of the subdivision regulations, including conditions placed on a subdivision. The Board may only waive the condition placed on the applicant that there could be no further subdivision for five years if the Board finds the following:

- (1) Strict conformity (with the condition imposed) would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the (subdivision) regulations; or*
- (2) Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the (subdivision) regulations."*

Mr. Orvis commented that these things should have been considered when the original requirements were waived.

Planner Menici said that the applicant had presented a subdivision application to the Planning Board and based upon what was presented the Board waived certain requirements of the Subdivision Regulations. Now over eight months later the applicants are saying they don't like this condition anymore and want to do something different. She said it appears that the applicants are looking to the Planning Board to defend their decision from January instead of presenting their justification as to why the Board should reconsider its decision. The application was presented as a minor subdivision which has a lower standard of information requirements and the conditions of approval were as a result of that. Mr. Orvis said he understood that and was not asking the Board to justify their decision. He will submit the new application as a major subdivision but he is not saying that he won't ask for any waivers. He will present enough information to show the full potential for subdivision. The Planner said he will have to show the wetlands across all 54 acres and some of the steep slopes.

Mr. Orvis said he did not agree to the condition of a five year restriction on further subdivision. He was reminded that the applicants had an appeal process available to them at the time of the January approval.

Mr. King commented that if a developer had come in with a major subdivision the same condition would not have been part of the approval. He said that this was a resident who was not looking forward and a reasonable case could be made for hardship.

Martin Laferte said he had a problem with the applicants waiting over eight months to ask for an amendment to the condition of approval and read from Town Counsel's email:

"...the applicant had the opportunity to appeal the Planning Board's decision with respect to the original subdivision, including its condition that there could be no further subdivision for five years, but the applicant failed to do so within 30 days in accordance with New Hampshire law and the Town's Subdivision Regulations and is instead seeking a waiver of such condition 8 months later."

At this point Chairman Parker said he would open the meeting to public comment but David Kestner objected that it was too soon. The Planner said that before opening to the public, all members should have an opportunity to speak and said she would also like to speak as the Board's advisor before opening to the public.

David Kestner said he was a little concerned over the issue of the financial hardship as far as justifying that as a reason to grant the relief from the restriction against further subdivision for five years. The applicants did have an

opportunity for appeal under State law and Town Regulations. Mr. Kestner was also concerned that this could be precedent setting in the Town for other minor subdivisions. He said if the applicants didn't feel the condition to be fair at the time of approval they could have taken advantage of the appeal process and if that had been done the Board might not be discussing this tonight. He added that he is sorry to say that even though recognizing that the applicants may have a hardship the Board may be establishing a precedent for other minor subdivisions with the same condition.

Chairman Parker said he shared Mr. Kestner's concerns and had struggled with this over the past two weeks. He said that while he sympathizes with the applicants, at some point the Board's decisions need to have finality. Also, when property is transferred after approval there is the expectation that the approvals will stay in place. In this case the condition of approval for which an amendment is sought is a five year moratorium from future subdivision and if the condition was unreasonable, the Chairman said he might be a little more sympathetic. Additionally, this goes to the issue of establishing a precedent.

Planner Menici said there is a revocation process that the Board can go through and then the applicants could come in with a new four-lot subdivision as recommended by Town Counsel. However, that option is not available in this instance because the lots have already been transferred.

Mr. Orvis said it is not the original applicants that are requesting the amendment because the lot has been transferred but it is a family member. The Chairman said that does not help the situation. Mr. Orvis said two lots were transferred and one of the transferred lots is trying to subdivide.

Chairman Parker then opened the hearing to public comment and asked the individual present to step up to the microphone and give his name and address.

Shawn O'Brien said he has known the Hussey family for 35 years. He said they have really never been a family to chop up land and the applicant has held this land with his mother for generations and is not asking for much with this subdivision. He is in favor of it and added that luck is not on the owner's side right now and the one additional lot will let his family get thru this hardship. He also said that the Husseys have been an asset to the Town and that they have paid taxes on the land they own for generations.

Planner Menici asked Mr. O'Brien if he was an abutter. He said he was not an abutter or related to the applicant but he was a property owner in Town and was speaking on Ted Hussey's behalf.

Charlie King asked Randy Orvis who was the original applicant. Mr. Orvis said it was Hattie and William Hussey and now it is Edward (Ted) Hussey, a brother, and Roberta Entwistle.

Mr. Orvis said the family originally had 100 + acres and in 1991 they did a subdivision of 30 acres. Then a year or two later they subdivided another 30 acres and then this 30 acres went to Ted but some was sold to a neighbor and after that the fourth subdivision was a piece across the road. Mr. King clarified that William transferred the parcel to Ted and now Ted wants to subdivide because of his hardship but he is not the original applicant.

Chairman Parker asked when the transfer took place. Mr. Orvis said a day or two after the subdivision they were all set to go. The Chairman asked if the conditions of approval had been available for their perusal. Planner Menici said they had been.

The Planner said there are significant code violations on this property and CEO Roseberry is requiring correction of those violations. For example the existing home shown had no building permits so the current property owner must back track and show that the house as it was built is code compliant. In addition the Planner understood from CEO Roseberry (all matters of public record) that there were multiple additional structures on the parcel such as trailers and sheds and they were not in compliance with the zoning ordinances or the housing code. The CEO has been told that some of these have been removed but that has not been confirmed. Planner Menici said the Board needs to be aware of these issues as they go forward with their decision.

Charlie King said that this is the property and house that Ted was living in at the time of the transfer and in order to bring the structure up to par he wants to sell off part of the land. Planner Menici said she understands that this is going to be a land swap not a sale.

Mr. King said that in the future he won't consider granting a waiver such as was granted here because it is not good for either side and applicants will have to fulfill all requirements without a waiver.

Planner Menici said it is typical for a municipality to adopt one standard for minor and a higher one for major subdivisions and the town's definition pretty much matches what most communities do. However, based upon tonight's discussion, the Board appears to be facing a policy decision about establishing only one standard and then it would not matter if a subdivision was dividing a parcel into two lots or 20 lots. There would be only one standard and all applicants would be required to meet the same submission standards.

Charlie King said waivers could be granted on a case by case basis. The Planner said if the Board moves in that direction then there would have to be guidelines under which waivers would be considered/granted.

Martin Laferte asked the Planner if this was the only minor subdivision to have the five year restriction. Planner Menici said that pretty much every minor subdivision had that condition. He said that if this were granted it is possible the Board would be opening the door for all the other minor subdivisions.

The Planner said that is why in his email, Town Counsel cautioned that the Board must be very specific as to why this is a unique situation. If the Board grants this request the applicant will come back with additional information as a major subdivision with some waiver requests. She added that just because waivers are requested the Board does not have to grant them.

During further discussion the Board and Planner Menici considered these points:

- Going forward the Board should decide if they want one standard of submission for all subdivisions with waivers considered on a case by case basis based upon specific guidelines
- For the application being heard tonight does financial difficulty qualify as a hardship
- State Statute says finances are not a consideration for hardship
- Lots have already been transferred and now a request is being made to amend a condition of approval
- Original subdivision cannot be reopened
- This request for amendment is not the same as a request to reconfigure a detention pond on a parcel still in the hands of the developer
- When do the Board's decisions become final
- Subdivision approval granted in January and lots sold but now are back due to an unforeseen hardship
- Town Counsel has advised the applicant had 30 days to appeal the original decision
- DES has regulations regarding what they want to see on a large parcel in its entirety before subdivision approval and that is good planning. Goes back to the point that the Board should make a policy decision about major and minor subdivisions

Chairman Parker asked if Mr. O'Brien had anything else to add.

Mr. O'Brien stated that the Board should consider the bottom line which is that the Hussey family is just trying to get through a hardship.

The Chairman closed the hearing to further public comment.

Glen Demers said although this is an ugly situation he agreed there appeared to be no way around it. He added that this may be precedent setting and the Board needed to be less free and make one standard for all subdivisions.

The Chairman commented that this is a touchy decision.

Planner Menici said she wanted to make sure the Board understood that they are not voting to allow the amendment but would be agreeing to review a new subdivision and at that time would consider an amendment to the conditions of approval to lift the five year restriction against further subdivision. That would be based upon what is presented with the new application for subdivision.

Randy Orvis said he was here tonight for the Board to decide about lifting the restriction before his client spends money on the application for a new subdivision.

Charlie King read the application and said he could make a motion to allow future subdivision. The Board could approve the new subdivision and then reimpose the condition for future restriction. Planner Menici said that Town Counsel has advised that the Board cannot consider just the single parcel. They must look at the parent parcel in its entirety and then waive the restriction on the approval in its entirety.

Mr. Orvis said that if either of the land owners on either side says the applicant cannot survey their land then Mr. Hussey cannot go forward.

Charlie King said it was time to move the question and he would motion to amend the conditions of approval. Planner Menici explained that if they entertain a motion to amend then they would have changed the conditions. She suggested they consider the new subdivision without guarantee that it will be granted.

Mr. Orvis said he understood that.

Charlie King motioned to allow the ability to consider an additional subdivision on Map R38 Lot 8; 2nd Glen Demers. Motion failed with two in favor and three opposed.

Planner Menici said the vote means that the Board is not going to consider future subdivision on the parcel until the five year restriction has expired. Chairman Parker said he agreed that the Board needed to review its policy on subdivisions.

At this point an individual who did not identify himself arrived and stated he was the attorney representing Ted Hussey. He said that he tuned in late to watch the hearing and when he saw the discussion decided to come down. He asked if the public comment portion was still open. Chairman Parker informed him that the hearing was closed to public comment and said it was unfortunate that he had not arrived earlier so he could speak.

Planner Menici reminded everyone that since this matter was discussed at a public hearing, the appeal process was available to the applicant.

At 7:50 pm David Kestner motioned for a 5 minute recess; 2nd Charlie King. Motion carried will all in favor. Meeting reconvened at 8:00 pm.

BUSINESS BEFORE THE BOARD CONTINUED:

- **Proposed 2014 Planning Board Meeting Schedule**

Planner Menici said the only changes she made were in anticipation of the zoning amendments generated from the Community Planning Grant. She looked at the deadlines for the public hearings and they are Monday deadlines so additional meetings were added in January and February and asked if the Board wanted to meet on Monday instead of Tuesday so they would not have two nights in a row.

Charlie King said the BOS might have additional meetings for the budget in January and February so there could be a conflict. This was discussed and it was decided that if there were a conflict the Planning Board could meet upstairs since the meetings did not have to be televised.

The proposed schedule will be changed to reflect meeting dates on January 7th, January 20th, February 3rd and February 18th.

Charlie King motioned to set the January 2014 meetings on January 7th and January 20th and the February 2014 meetings on February 3rd and February 18th; 2nd Martin Laferte. Motion carried with all in favor.

- **Any other business to come before the Board**

None

At 8:13 pm Martin Laferte motioned to adjourn the meeting; 2nd Glen Demers. Motion carried with all in favor.

Respectfully submitted,
Bette Anne Gallagher, Department Secretary

Chairman, Paul Parker