

Town of Farmington
Planning Board Meeting Minutes
Tuesday, November 17, 2020

Board Members Present:

Charlie King, Chairman
Rick Pelkey, Vice Chairman
Gerry Vachon, Selectmen's Rep.
Bruce Bridges
Ann Titus

Board Members Absent:

Bill Fisher, Secretary, excused
Jeremy Squires, Alternate, excused
Stephen Henry, excused

Others Present:

Kyle Pimental, Interim Planner
Jamie Meyer
Sharon Turner

BUSINESS BEFORE THE BOARD:

Call to Order:

Chairman King called the meeting to order at 6 p.m.

Pledge of Allegiance:

All present stood for the Pledge of Allegiance.

Review of Minutes:

October 20, 2020 – Public Meeting Minutes – No errors or omissions

Motion: (Titus, second Bridges) to accept the minutes as written passed 5-0.

Public Comment:

Resident Jamie Meyer told the board that she and resident Sharon Turner came before the board because they are trying to figure out how to amend ordinances and in particular the fireworks ordinance and the noise ordinance if we have one.

Mr. King said the noise ordinance is a policy set by the Board of Selectmen.

Ms. Meyer said they told her to come here for both issues because they would have to be changed by a warrant article (at Town Meeting).

Mr. King said if they are considering a warrant article by petition they would need to have at least 25 residents' signatures, the signatures would have to be verified by the Town Clerk and there is a deadline for submission to the Town.

Ms. Meyer said she didn't know how to write a warrant article.

Ms. Turner asked where to bring the article.

Mr. King said the warrant article must be submitted to the Town Clerk. He said there are 2 ways to get an article on the warrant, one by citizen petition or the Planning Board or Board of

Selectmen can submit warrant articles. He asked if the fireworks or noise ordinance is included in the zoning ordinance.

Mr. Pimental said he briefly reviewed the Town's zoning and found that the Town does not have a specific noise or fireworks ordinance. He said the Fire Dept. may have rules on fireworks but there is nothing in the zoning ordinance.

Ms. Meyer said the state website states fireworks are permissible in Farmington.

Mr. Vachon said it is permissible because there is nothing that says it isn't permissible.

Ms. Meyer said they would like to have an ordinance that stipulates certain things going on because there are class b fireworks going off in the downtown area.

Mr. King suggested they do some research on other towns that have such ordinances and they may find one they prefer.

Mr. Pelkey said the Town Clerk would have the information on the filing deadlines, required number of signatures, etc.

Ms. Meyer said they planned to have a separate warrant article for the noise because of the M-80's and the cherry bombs set off at all hours of the night all summer long. She said they are explosives not fireworks and would come under a noise ordinance.

Mr. Pelkey said on the NH Municipal Assoc. website it says Tuesday, Feb. 2, 2021 is the last day for 25 or more voters or 2% of the total number of registered voters, whichever is less but in no case fewer than 10, to petition the Selectmen to include an article on the warrant. He said they must petition the Selectmen with the article they want them to add to the ballot and the relevant state law is RSA 39:3.

Ms. Meyer said she has heard if the article isn't written correctly they won't submit it and asked if there is any pro bono legal advice available in town to help them with this.

Mr. Pelkey said all of the articles get reviewed by the state for wording before they get put on the ballot.

Mr. King said the Town Clerk may be able to say if a service like that is available through the state where someone could review it to make sure it is a legal warrant article. He said that typically a noise ordinance that has been adopted by a Town has already undergone legal review and is probably pretty sound.

Ms. Meyer said she has seen some that were very detailed down to the decimals for noise and some that are very generic.

Mr. King said any ordinance is subject to interpretation and enforcement and that is why some ordinances are very detailed.

Ms. Meyer said with both these ordinances she was not out to stop fireworks on a recreational level at the high school but to stop the class b fireworks in-town or anywhere where people are uncomfortable with it around their animals and the danger to their homes. She asked who would take over the enforcement of the ordinances if they are approved by the voters.

Mr. King said it could be the Police Dept., the Fire Dept. or **Code Enforcement Officer (CEO)**. He

said if those depts. don't feel like enforcing it even though it was adopted by the Town it may not be enforced to the level she feels it should be enforced.

Ms. Meyer said she was told they can't enforce it because there is no ordinance.

Mr. King said the Selectmen could write and bring forth these ordinances to the voters if they chose to.

Mr. Bridges asked if this is what they need to go through to get a warrant article why they sent them to the Planning Board, why they didn't give them this information and if there is something they can do.

Mr. Pimental said there may be some confusion over the difference in the procedure for a warrant article and a zoning amendment and they each have different filing deadlines.

Mr. King asked procedurally if the noise ordinance should be under zoning or from the Selectmen.

Mr. Pimental said he would like to make that determination and tell them in which direction to go in and asked them to contact him for further discussion on the matter.

Mr. Pelkey said if they want to have this in the zoning ordinance the CEO is the person who interprets and enforces the zoning and if they want Police involvement then they want to put it into a warrant article from the Selectmen.

Mr. King said if it's a zoning violation the Police or Fire Dept. doesn't deal with it, it becomes a code enforcement issue which ends up as a legal action in court if they don't comply.

Ms. Meyer said she was curious what the other towns that have an ordinance are doing and that most of the surrounding towns have them.

Ms. Turner said she couldn't imagine the CEO getting involved with enforcing a fireworks ordinance because fireworks happen at night.

Mr. Pimental said if it does go into the zoning ordinance it is unlikely to make it this year because of the time constraints. He said the last day for the board to accept petitioned zoning amendments is Dec. 9 and it would have to be a relatively well structured ordinance for them to move forward with it.

Mr. King disagreed and said if it's submitted to them by that date whether it is well or poorly written or correct or not they are legally obliged to accept it.

Mr. Pelkey asked if it still has to come up for public discussion because it's a petitioned zoning amendment.

Mr. Pimental said they would have to have a public hearing on it.

Mr. King said they would have some discussion and comment on it at the public hearing but he didn't know if the board's recommendation could go forward onto the warrant.

Mr. Pimental said he would like to do more research on this and layout their choices as to which path to take.

Mr. King suggested they think about the audience that is going to support or not support this. He said if they proposed putting this restriction on the entire town the people in the more rural

areas of town probably would not be in favor of it. If your concern is mostly in the downtown then I would recommend it he said.

Ms. Meyer said that her "big deal" in this is the class b explosives that are going off that are not permissible and are highly dangerous.

Ms. Turner said they are so loud that people on both ends of town will talk about it when it happens and there are people competing against each other with the noise.

Mr. King said they may want to contact other towns with a fireworks or noise ordinance and ask them how they enforce it and what issues they have in enforcing it. He said if the voters feel this is an issue and approve the articles and then they find that it doesn't work they can make subsequent changes to it either by a petition or by getting the Selectmen to revise it.

Ms. Meyers said they would start getting things in order and if anyone watching would like to help they can contact her at 603-834-2749.

Ms. Turner said her phone number is 603-396-2319.

Mr. Pimental said the City of Rochester adopted a fireworks ordinance recently as they had the same issues and they now require a permit if you are going use fireworks. He said that their fireworks and noise ordinances are not in their zoning ordinance. Their noise ordinance is located in Chapter 75 and their fireworks ordinance is under Fires and Fire Safety he said.

Mr. Vachon said he believes they also require a fireworks permit in Somersworth.

Mr. Pimental said Somersworth has a noise/nuisance control ordinance (Chapter 13b) and a display of permissible fireworks ordinance (Chapter 21a) that is not in their zoning ordinance. He said this may be something for the Selectmen to consider and recommended that they look at a noise ordinance holistically including other types of noise not just fireworks.

Mr. King said if it goes by petition to the Selectmen they don't have the ability to change it or not put it forward as written.

Mr. Pimental said they can vote it down at the end and don't have to adopt it.

Mr. Bridges said he just contacted Selectmen Chairman Paula Proulx who said if they come before the Selectmen they may be able to do something if the whole board agrees on it. He said she said if the board agrees on it they can make the ordinance and it would be Police enforced.

Mr. King suggested they first choose what they want it to say, bring it forward to the Selectmen and if they choose to take it up great but if they choose to make changes they are not comfortable they still have the draft they can use for a petitioned warrant article. He said even if they choose to take it up it could end up not meeting the filing deadline by mistake.

Mrs. Titus advised them to write something up, get the required signatures, present it to Selectmen on Monday and see what the board/public comment is as they might get some helpful input because it is all time sensitive.

Mr. Vachon said there may not be a noise ordinance but in the past he has been told by the Police that after 10 p.m. he would be charged with disorderly conduct if he doesn't cut it out.

Mr. King asked if they have had any success with reporting to the Police that it's after 10 or 11

p.m. and someone is setting off M-80's.

Ms. Meyer said she was told there is no noise ordinance and there is nothing they can do.

Mrs. Titus said there are certain people that are not complying and being disrespectful but it's not the whole town. She said she understood their concerns but when the Police respond they don't have the ability to do anything other than to ask them to stop the fireworks.

Ms. Meyer said she favored having a structured document that says what you can and can't do. If we had that documentation it would be a lot easier to enforce she said.

Mrs. Titus then suggested that they ask for help with this issue on Face book and see what they get for results.

Potential Code Violations Re: Voluntary Lot Mergers:

Mr. Pimental said the last line in RSA 674:39 states "No merger shall be approved that would create a violation of then-current ordinances or regulations" and Mr. King had asked for some examples of that to ensure if they move this to the staff level for approval that there would be no misinterpretations of this.

He said the example he gave at the last meeting was if there were 2 separate lots that had 2 houses on them and you merged them together you'd have 2 principal uses on 1 lot which is not allowed if they couldn't subdivide it. He said other examples provided by the Town Attorney include: if they had 2 houses and each of them had an Accessory Dwelling Unit (ADU) and if you merge those lots you now have 2 ADU's on 1 lot which is not allowed, merging two lots would cause the single lot to exceed the maximum number of driveways allowed, if the merged lots would exceed the allowable wind energy system capacity and if merging two lots would violate the maximum number and/or maximum surface area for signs.

Mr. King said the first example says all lots are only allowed 1 principal use and in the last zoning change they made a barn a principal use so by a strict interpretation of that 1 lot with a house and 1 lot with a barn are primary uses and the merger wouldn't be allowed. He said a reasonable interpretation would say the barn then becomes a secondary accessory structure and is no longer a primary use but that depends on the interpretation.

He said they must comply with the RSA and suggested they could write in that one of primary uses becomes subordinate to the other primary use.

Mr. Pimental said if someone came before them for a merger and one of the structures was a barn that is what they would say.

Mr. King asked how they would ensure that. He said example #3 talks about the maximum number of driveways and did not recall that there are a maximum number of driveways allowed per lot in Farmington. He said to his knowledge the zoning ordinance doesn't speak to the maximum number of curb cuts allowed and that is determined by NH DOT for state roads.

Mr. Pimental said the Town driveway permits are granted through the DPW not the Planning Office. He said the driveway permit section in the zoning ordinance says no one shall build a driveway that accesses a public street without first obtaining a permit and each lot fronting on

a Class V or better road shall be entitled to at least one driveway access per lot and additional driveway accesses may be permitted with the approval of the CEO and the DPW Director. He said any lot with multi-family, commercial, industrial, institutional or retail uses having more than 100' of street frontage shall be entitled to one additional driveway access for each 250' of street frontage. All driveway accesses shall be located to minimize the impact on traffic safety and flow, located at least 25' from the intersection of a street and the distance between 2 driveway accesses must be at least 20' he said.

Mr. Pimental said currently if a merger with multiple driveways in it was to come before the board his memo would state what the zoning says, what they have, if they would be in compliance or not and whether or not the board can waive the requirements. He said that process would continue to ensure that they are looking at that but the staff would be making the decision as opposed to bringing it to the board.

Mr. King said during his tenure on this board they never went to the level of detail to ask how many driveways they had or the uses when reviewing a merger and their concerns were more basic such as the approval of the lending institution and that all the sign-offs were completed.

Mr. Pelkey said technically merging one lot with a barn and one lot with a house might be a violation but at the same time if the "average Joe" wanted to build a house and a barn on a lot they would have zero problems or concerns with that.

Mr. King asked if it's possible to change the zoning so that where they allow accessory buildings to be a primary use that in the case of a merger that those primary uses would become secondary uses under these conditions. He said you could have the same thing with a business where there are 2 commercial lots with a heating oil service business on 1 lot and a retail store on the second lot. Then the retail store buys the lot with heating oil service and intends to use that building as an accessory use to the store so it's no longer a primary use he said.

Mr. Pimental said his recommendation would be to not necessarily put this in the zoning but to make it part of the application that explicitly says if there is an existing principal structure on the lot that is going to be merged with another lot that has a principal structure they have to prove that the second principal structure then becomes subordinate to the principal structure.

Mr. King asked how they would put that on the application so that the applicant understands what it means.

Mr. Pimental said he would have to use different language and in that case they could allow a principal use to change to a secondary use.

Mr. King said they could ask if there are any structures on the other lot and their intended use. Based on the answer they could say that will become a secondary use or that is a second primary use he said.

Mr. Pelkey said in the case of the ADU's they could say they are not allowed to do that. He said they could decertify one of the ADU's but they would still have 2 residences on lot and they are not going to let them do that.

Mr. King said they could if there was enough land area to subdivide the lot later.

Mr. Pelkey said as long as the resulting lot can be made into something that conforms whether they convert a use or decertify an ADU that's the way we should be going because that gives them the maximum amount of flexibility they can get.

Mr. Pimental said that is their intent and is the same way the board would handle it in trying to allow the merger but to make sure they do it in compliance with state law. He said he would continue to work on the merger application and bring the revised version to the next meeting.

Richard's Way Proposed Acquisition of Drainage/Cistern Per RSA 41:14-a:

Mr. Pimental said this RSA pertains to the acquisition or sale of land, buildings or both and the Town Administrator has asked that this discussion be tabled. He said the Town is still researching this matter and he requested that it not be discussed tonight.

Mr. King asked if the Town feels they don't have to accept the infrastructure based on accepting the road.

Mr. Pimental said he did not know what they are looking into so he would rather not have that discussion now and wait until the Town Administrator gives him the thumbs up to discuss it.

Mr. King said he sat on this application and this was a subdivision where the developer tried to do everything right and conformed to all the rules and regulations. He said the drainage required through the engineering for the roadway included these items listed here and the board and staff at the time tried to be very clear that if the road was accepted this infrastructure needed to be maintained so he didn't know if it was the ownership of the land or the requirement to maintain the land that goes with the roadway that is the concern.

Mr. Pimental advised him to "stay tuned".

Zoning Amendments Revisions:

Mr. Pimental said the board received the latest draft and that he reviewed the revisions with legal counsel and some minor changes have been highlighted in the document.

Section 1.02D, Site Plan Review Authority- Technical Review Committee – He said he added that new construction means requiring site plan review. The other minor change is to clarify that a change or expansion of use that doesn't meet the criteria and therefore does not require site plan review at the Planning Board can be reviewed and approved by staff in the Planning and Community Development Dept.

He said the first bullet under this initially said to meet all site plan regulations and asked how they could have something that meets all site plan regulations when directly above that it states it doesn't require site plan review so it was rephrased to say the new or expanded use must remain in compliance with existing approved site plan.

Mr. King suggested "existing approved" site plan be flipped to "approved existing" site plan because someone could say it's existing but that isn't what it was approved for and was changed.

Mr. Pimental said in bullet #4 they changed the number of days to provide comments or request a public hearing from 10 to 7 and added that based on public input received the Planning and Community Development staff will determine if a public hearing is needed. He then asked for a motion to move this forward to get it ready for the public hearing if there were no more comments/questions from the board.

Motion: (King, second Titus) to forward this to a public hearing yet to be determined passed 5-0.

Section 1.10, Interpretation, Administration and Enforcement, (A) Administration and Enforcement-

Mr. Pimental said item 1a was revised to say the Town Administrator will designate a Zoning Administrator and item D Appeals of Decisions now states that decisions of the Zoning Administrator and/or the Building Insp. /CEO may be appealed to the ZBA and that all appeals shall be filed within 30 days of the written order or decision.

He said originally it said the Community Planning Director and the CEO would have to make the decisions unanimously and if not the Planning Board would be the tie breaker. He said the board received copies of Attorney Christine Fillmore's response on why that is a bad idea.

Mr. Pimental said the question is should both the CEO and the Planning Director be in charge of interpreting the zoning ordinance, that all decisions be unanimous and the Planning Board would break any ties. He read that Att. Fillmore found this as problematic because any time more than 1 person is in charge there is potential for disagreement, confusion and delay which doesn't serve anyone well. Secondly the board has no authority to participate in the administration or enforcement of the zoning ordinance other than proposing zoning amendments and reviewing applications for site plan, subdivision and conditional use permits or to consider revocation of a site plan or subdivision approval. Interpretations of the zoning ordinance for any other purpose that isn't within the Planning Board's sphere should not be made by the board and that function should be carried out by a single enforcement authority with no input from the board she said.

Mr. King said Att. Fillmore's argument says they can write the laws but they can't interpret the law and asked how that makes any sense. He said he agreed that it is not the board's job to enforce it but saying having 2 people do it is problematic is an opinion that she doesn't think it will work well and she doesn't cite any case law to back it up. Based upon the discussions we've had we think it will work he said.

Mr. Pelkey asked who other than the people proposing the ordinances understand what the intent of it was. He said the basis for the whole discussion is that there has been some difference of opinion as to the intent meaning of some of the ordinances and we're trying to give the board that is proposing the ordinances an opportunity to weigh in on what they actually mean he said.

Mr. Pimental said other communities with an established Zoning Administrator 9 out of 10 times that person is either the Planning Director or a liaison to the Planning Board. He said they

work with the board to draft zoning amendments, are there reviewing plans and are at every meeting working through things with the board members as opposed to someone who is not involved with the board at all and has no context on the board's intent was.

He said the designated a Zoning Administrator should be the person that is here and working most closely with the Planning Board and the ZBA on whatever issues the Town is working on. That way there is a clear back and forth where the board is not necessarily in a position to make the interpretation but is conveying what the board's intent is which allows the Administrator to take that feedback and make a decision he said.

Mr. Pimental said it is an interesting approach to have 2 people making the decisions and if they can't agree on something it should be flagged for the board to look at. He said in the end he agreed with the attorney that it probably makes more sense to have 1 person do it and he looked throughout the state and couldn't find one example of two people working as Zoning Administrators.

Mr. King said the Town Administrator would appoint a person to that position and it could be the dog catcher because he feels he's qualified. Our goal is to have a qualified person doing the zoning interpretation and when there's a dispute it gets resolved in the best interest of the residents in the town. If the zoning ordinance isn't clear and 2 people come up with 2 different interpretations then we have to fix it consistently and equitably for everyone in town he said.

Mr. Pimental said a potential way to make this clearer is to put a specific definition to the Zoning Administrator position and the Town Administrator would not be able to designate someone from Public Works (for example).

Mr. King said in the current ordinance the board designates the CEO as the interpreter of the ordinance. He asked why they couldn't designate the Planning Director to be authorized to interpret and administer the ordinance.

Mr. Pimental said his only concern with that is there has been some instability with the Planner position and asked if the Town doesn't have a Planner who is the designee.

Mr. King said it would go back to having the Town Administrator appointing someone to fill the position.

Mr. Pelkey asked if they could have the Town Administrator submit a name to the board for their approval.

Mr. Pimental said he didn't know if they had that authority and suggested it could say with input from the board. He said Mr. King was correct in that the first part of the attorney's response is her opinion and that is what he asked for. All of these will have a legal review before the public hearing so if you feel that strongly about having 2 people being the interpreters of the ordinance you can move forward with that and let legal counsel shoot it down if they want to he said.

Mr. King said the attorney stated that interpretations of the zoning ordinance for any other purpose that isn't within the board's sphere shouldn't be made by the board and asked why

interpreting the ordinance is not in the Planning Board's sphere.

He then asked if it is legal for the Planning Board to render an interpretation on its own ordinance and if other towns are doing it.

Mr. Pimental said from her (Att. Fillmore) response he would say no.

Mr. Pelkey said when they come before the board with an application the board is interpreting the ordinance when they are doing the review.

Mr. King said if an applicant comes before the board for subdivision or site plan review and they say there is something in the ordinance saying they can't have or do something they are interpreting the ordinance. He asked how interpreting the ordinance during the application process is any different from interpreting it during a review.

Mr. Pelkey said the board renders a decision on whether something is okay or not per the ordinance and then it gets approved and the CEO enforces that decision.

Mr. Pimental said when the board is going through the formal process with an applicant it is done at a public hearing that has been legally noticed and the abutters are notified so the process is a very transparent open process. He said if someone submits something to the Planning Office before the board sees it and the staff makes an interpretation regarding a use that interpretation is of the use within that zone and the board would not be involved in that determination.

Mr. King asked if they could find any towns that allow assistance from the Planning Board for interpretation or if no other Town allows discussion or interpretation with the board if the Zoning Administrator designee is not sure about something. He then asked what happens if that person says they are not sure.

Mr. Pimental said his guess is that they would consult with legal counsel or the Zoning Board.

Mr. King said the Zoning Board is the board where you seek relief but they didn't write the zoning ordinance.

Mrs. Titus asked if there is a different attorney available there that may have more experience with these issues.

Mr. Pimental said the firm has multiple attorneys. He added that this was an informal e-mail to get her thoughts on these matters and he didn't ask for a full blown legal opinion which would have been on the firm's letter head and would have been much more structured.

Mr. King said he couldn't go back and ask the same questions because he would just get the same answers. He said Mr. Pimental would need to pose the questions he asked and then show the other towns where the CEO or Zoning Administrator consults with the Planning Board.

Mrs. Titus said she didn't agree with the attorney's opinion and that they are trying to help the businesses and residents in town and she's putting a damper on it. I'd like to see another legal opinion on this she said.

Mr. King said he wasn't saying what they're proposing doesn't have some things that may need to be revised but he didn't agree with the argument that because nobody else has 2 people do

it so we shouldn't do it. He said one problem with zoning is that everybody plays Follow the Leader and copies examples from other towns instead of writing what works for their town. In this case just because somebody hasn't done it before doesn't mean it's not a better idea and we could be a trend setter he said.

Mr. Pimental said if the board wants to go in this direction they can motion to reverse it back to the language that it was with the 2 staff members making interpretations of the ordinance and the board as the tie breaker and submit it for legal review.

Motion: So moved by Mr. Pelkey and seconded by Mr. Vachon.

Discussion: Mr. King asked if they would have some supporting arguments to plead their case.

Mr. Pimental said he would ask them to provide case studies or legal precedence when they do the legal review.

Mr. King suggested Mr. Pimental could provide legal counsel with a memo explaining the board's thoughts and arguments for doing this and request a legal review.

Mr. Pimental said he would put that together and submit it.

Vote: The motion passed 5-0.

Section 3.23 Storage Units – Mr. Pimental said the only change in this section was that provision 1B now reads "All temporary storage units which have previously existed on a property prior to the adoption of amendments to Section 3.23 of the Town's Zoning Ordinance (March 2021) will be considered permanent storage units and do not need a building permit however must comply with the standards set forth in Section 3.23 (2).

Mr. King asked if they did not have that and do not need a building permit.

Mr. Pimental said they tried grandfathering them first, then they tried exempting them and legal counsel advised them not to bother with that and to just say that you do not need a building permit.

Mr. King said that functions exactly as the other words the attorneys didn't like (grandfathering, exempt). He said he agreed with it because it also states if it was there you don't need a permit.

Mr. Pimental said they added more language to make it clearer about what you need to do for permanent storage units and the process is more clearly defined. He said in item G it states that the maximum temporary use for storage in the event of home renovations is 6 months but it didn't determine the length of a renewal so he added "One renewal, which is a period limited to a maximum of three (3) months is allowed" and asked if the board was comfortable with it.

Mr. King said he could go with 3 or 6 months for a renewal.

Mr. Bridges said he would like it to say 6 months because he has seen many houses being built and take a year to complete it.

Mr. Pelkey said the some people near him had a fire and it took forever for the insurance company to address their claim and they needed a place to put their stuff so it was protected while there was a hole in the roof.

Motion: (King, second Titus) to change it to six months passed 5-0.

Motion: (King, second Vachon) to accept as amended and move it to public hearing passed 5-0. Section 2.00 Base Zoning Districts, Table 2.00 (B) Permitted Land Use Table Codes – Mr.

Pimental began by reminding the board that response provided by the attorney is not necessarily a full legal opinion and was an informal opinion in an e-mail. He read aloud from her response that stated that there is no authority in RSA 674:43 to distinguish between which categories of non-residential or multi-family uses do or don't require site plan review, that the P and PR designations don't make any sense and may vulnerable to a legal challenge. He read that Att. Fillmore suggested that the those designations be removed and perhaps be replaced with a CUP requirement, to add the NAICS classification codes to easily distinguish those uses that require more or less regulation and to consider an overhaul of the table next year. He then turned to the Table of Permitted Uses (page 9 of the revisions) and pointed how they took a stab at adding all of the land based codes (LBCS) as well as the NAICS codes for the commercial and industrial uses. He said the board also received 11" x 17" sheets containing all the codes that line up with the codes in the table.

Mr. Pimental said it was time consuming to do the commercial/industrial section and change a lot of the uses using more of a standard classification. He said some of them are relatively small changes like barber shop/beauty salon to hair, nail and skin care services but now they can be associated with specific definitions and standardized uses.

He said on the 11 x 17 print out each one of the descriptions has a paragraph that goes with it but they weren't going to put all of that in and create a 50 page document. Each one of these is described very thoroughly and will give the person interpreting the ordinance a much better idea of what is included in each category and give the board the opportunity to decide which ones should be called out on its own he said.

Mr. King asked what happens if they pull one use out of a category.

Mr. Pimental said it becomes its own use.

Mr. King asked if it would fall under a catch all such as "Uses Not Specified". He gave the example of taking bridge and tunnel construction out of Construction-related Businesses and Contractors.

Mr. Pimental said it would get moved over to the land uses column because they would want to treat that differently than Construction-related Businesses and Contractors. He said for example, if the board was okay with all the commercial/industrial uses in the Village District except for bridge and tunnel construction they would need to pull that one out onto a separate line and go through and designate in which districts it would be allowed or prohibited.

Mr. King said they could also describe the construction-related uses as high impact or low impact and still use the codes. He said they may not want to allow heavy construction, bridge and tunnel construction or water/sewer construction in the VC.

Mr. Pelkey asked if they have to put every code for every possibility in the table.

Mr. King said if they missed a code it would fall under a commercial use not specified and then

it would target how to seek approval either by variance or special exception from the ZBA.

Mr. Pimental said he hoped by going this route they would limit the amount of uses that don't fall somewhere in the table.

He said they did break up manufacturing uses into light manufacturing and heavy manufacturing as they felt there was a difference there but the board may not agree with how they are broken out. This is a start and there is no way we would be able to get through this. Having an idea of what these things mean you may want to look at what you allow and don't allow and trying to squeeze this in this year will be too much he said.

Mr. Pimental said he didn't think it wise to do this just for commercial/industrial uses and if you make this big change you want to do it for the entire ordinance. He said if the board wants to go in this direction they can continue to make progress on it and have a more robust Table of Permitted Uses to put forth to the voters next year.

He said he didn't think they could get into the issue of conditional use permits this year and that would be something where instead of saying no they could make the use allowed by special exception or by a CUP and add additional requirements beyond the site plan regulations because there would be an impact to a neighborhood but it would be a good use for the town.

Mr. Pimental said in Section E where it talks about Special Exception General Standards there is no need to repeat that under each individual zoning district and they could get rid of all that.

He said this is a reasonable change for this year and asked the board for their thoughts.

Mr. King said there is no heavy manufacturing section in the table.

Mr. Pimental said it was not included in his draft revisions but it would be included in the table.

Mr. King asked if the NAICS codes classify heavy manufacturing as misc. manufacturing.

Mr. Pimental said for misc. manufacturing it says it includes a wide variety of products and manufacturing processes that differ from each other and cannot readily be classified. The industries in this subsection are identified by what is made rather than how it is made he said.

Mr. Pelkey asked if the list of heavy manufacturing uses on the 11 x 17 handout is all inclusive.

Mr. Pimental said it includes the existing commercial/industrial uses and a few they added. He said the board would have to have a discussion about which manufacturing uses belong in heavy or light manufacturing.

He said there were a number of products that were not allowed anywhere (disinfectants, insecticides, poisons, etc.) and they saw that as the Town's intent was to classify them as hazardous materials or regulated substances so they broke them out into its own section. This was our first crack at this and it needs work and the board's input he said.

Mr. King said some of the manufacturing uses could be small scale operations with minimal impact but the NAICS code designates them as heavy so they could be prone to zoning it as this big heavy impact when it may not be.

Mr. Pelkey said the process could be identified as heavy manufacturing but depending on the scale it could be a guy with a lathe in his backyard.

Mr. King said a guy who makes belt buckles who has a small forge with some blacksmith tools could potentially qualify under this definition.

Mr. Pelkey said most of the same uses could be in both light and heavy manufacturing and were being defined by scale. You could have the same use at a different scale and have a different impact he said.

Mr. Pimental said the ordinance has a light manufacturing category but it has no definition.

Mr. King said Mr. Pimental recommended to get rid of the PR designation in the charts and the uses would be Permitted and allowed by this ordinance or allowed by special exception and asked how someone would know if they have to come for review based on what it says.

Mr. Pimental said that if it's a non-residential use or a multi-family use with more than 3 residential units it would need site plan review.

Mr. King said there are some non-residential uses allowed without review such as home occupations/home businesses and childcare.

Mr. Pimental said in Section 5 of the zoning it says home occupations do not need Planning Board review as long as they meet site plan regulations and supersedes the table. Home businesses do require approval from the Planning Board. If Section 5 was not included in the zoning and P's were put in across the board both home businesses and home occupations would need site plan review he said.

Mr. King said the revised table shows agriculture uses other than animal production are P in all districts and asked if the ordinance clearly states that those uses do not need Planning Board review.

Mr. Pimental said no and those uses would need Planning Board review.

Mr. King asked if forestry non-commercial uses are clearly designated as not needing site plan review and it may not be something they would typically flag but it depends on who is interpreting it.

Mr. Pimental said the only uses specifically called out in zoning are the home businesses and home occupations. He said all they are saying is anything that has a P on it that use is allowed. Moving forward the board would not review the use and they would only review it if there was a requirement for a site plan application for non-residential uses and multi-family use with more than 3 units.

Mr. King said by using the P and PR designations they were designating the things they did not want to review. He said when they get rid of the PR's and replace them with P's there may be a wholesale change in whether or not they were required to come before the board in the past vs. in the future.

Mr. Pelkey said the exceptions should be added to the site plan review regulations for those uses that have to come to the board rather than in the Table of Permitted Uses because the site plan review is triggered by the site plan regulations not by the Table of Permitted Uses.

Mr. Pimental agreed but cautioned the board on what types of non-residential uses they don't

want to have site plan review. He returned to the single family residential uses and said the childcare use is an accessory use and is not going to trigger a site plan review. Agricultural uses such as animal production and support services and other agricultural uses that are P's have raised some flags and it is in the board's best interest to require site plan review for those types of uses for commercial use such as a dairy farm he said.

Mr. King said he was not inclined to put additional restrictions on agricultural uses and asked if his neighbor with 10 acres of land decides he wants to raise and sell Hereford cattle as a business if they would regulate it, prohibit it or require him to go before the board tell us the proposed location of his manure pile, silo and what time he would ring the bell to feed them.

Mr. Bridges said it would depend on what part of town he planned to do this.

Mr. King said he was referring to the agricultural/residential (AR) zone.

Mr. Bridges said he didn't think they should be sticking their "snot locker" in the AR zone.

Mr. Pelkey asked about state regulations governing agricultural uses.

Mr. Pimental said agritourism has a whole section in the state law and there are probably others they could look at. He said in his opinion a commercial use is a commercial use whether it is agricultural or anything else and they should be regulated by the Planning Board.

Mr. King said anybody that has a farm is a commercial use.

Mr. Pelkey noted there is cottage industry going on now where people hang a sign saying they are a farm and sell various products.

Mr. Pimental asked for the number of active farms in Farmington.

Mr. King said some people use the registered farm designation for tax purposes or for certain rights granted to farmers such agricultural license plates for their vehicles so there needs to be a threshold for the definition of active farm such as the number of non-family employees, etc. Once you say somebody that is selling something trying to make a living is a business we have to regulate it he said.

Mr. Pelkey said they need to ensure it's not having an unwanted impact on the neighborhood.

Mr. Pimental asked if this transition is primarily a problem for the agricultural section. He said he may need to do more research on this and there may be some clearer definitions in the state law for what is deemed a commercial farming operation and maybe there are thresholds there the Town can use. He said he didn't want to over regulate things either but they have to find a way to get away from the PR designations without causing too many waves.

Mr. Bridges said he has a farm at his house but he doesn't sell anything so it's just a working farm and asked if they would regulate that.

Mr. Pimental said if you have a farm on your property where the produce is not sold as retail a site plan review is not required.

Mr. King said a registered farm that has land in current use, is less than 10 acres and has more than \$2,300 in sales a year can get an exemption and asked if they would regulate that. He said the answer may be to change the PR's to P's and then put what they want to see and don't

want to see in the site plan regulations which can be changed by the board without going to Town Meeting and asked where it would be appropriate to say they don't have to come here. Mr. Pimental said he would get rid of what he added to the Table of Permitted Uses and go back to the existing table, change the PR's to P's for all the districts and get some agricultural thresholds for the December meeting.

Mr. Pelkey asked if the use codes are available online.

Mr. Pimental said the codes are available online and the NAICS document is 950 pages long. He said the idea behind the codes is to provide guidance on what the uses are and to allow the board to make a more informed decision on where they want to allow them.

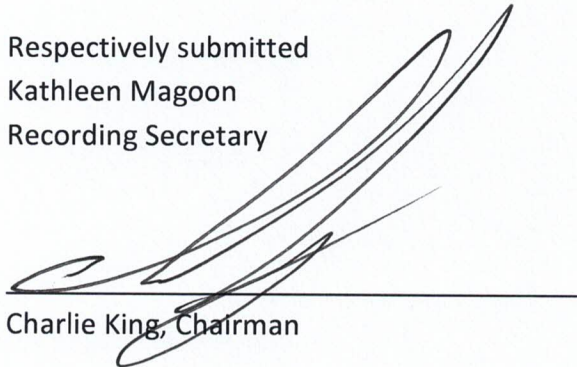
Any Other Business before the Board:

Master Plan Update- Mr. Pimental said his goal is to have the Master Plan to the board in Dec. so he farmed it out to a colleague more skilled with In Design software. He said he planned to meet with her on Friday with a deadline of Dec. 15 to have a polished draft for the board.

Adjournment:

Motion: (Bridges, second Titus) to adjourn the meeting passed 5-0 at 8:23 p.m.

Respectively submitted
Kathleen Magoon
Recording Secretary

A handwritten signature in dark ink, appearing to read 'Charlie King', is written over a horizontal line. The signature is stylized with a large, sweeping loop at the end.

Charlie King, Chairman