

Town of Farmington
Planning Board Meeting Minutes
Tuesday, May 15, 2018

Board Members Present:

David Kestner, Chairman
Martin Laferte, Vice Chairman
Bill Fisher, Secretary
TJ Place, Selectmen's Rep.
Stephen Henry
Charlie King

Board Members Absent:

Rick Pelkey
Brandy Sanger, Alternate

Others Present:

Dan DeSantis, Town Planner
Tim Bernier, TF Bernier, Inc.
Nick Johnson, Chris Knight
Nick Fontaine, Robert Berner, Eversource
Residents Samantha Place, Diane Thayer

BUSINESS BEFORE THE BOARD:

Call to Order:

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

Pledge of Allegiance:

All present stood for the Pledge of Allegiance.

Review of Meeting Minutes:

April 17, 2018- No errors or omissions

Motion: (Fisher, second Laferte) to accept the minutes as written passed 6-0.

Correspondence:

Pike Excavation Response Letters (FYI)- Mr. King said the response letter regarding the Paulson Road property (Map R35, Lot 7) states that they did not renew the permit in 2016 and that they plan to continue with the reclamation of the site through 2018 which should have been completed by the end of 2017. He asked for the time limit on the reclamation and when the company plans to complete it. He suggested the Town keep on top of it to make sure it gets done within a reasonable time frame.

Mr. DeSantis said he didn't know the answers to the questions but that he would find out.

Mr. King asked about an encroachment onto Map R20, Lot 8. Pike responded that Map R15, Lot 7-2 is owned by the Huckin's Trust and that the company does not have any interest in it. The letter also states that Pike leases another lot from the Trust, Map R15, Lot 14 which does not abut Map 20, Lot 8. He asked what the next step is for that area that has been excavated.

Mr. DeSantis said the owner of the parcel that was encroached upon has applied for an AOT permit to reclaim the area. He said that after looking into it for several weeks they found that another excavator excavated on Pike property and also encroached on a residential property.

Mr. King asked if the property owners were aware of this and how they will be compensated. Mr. DeSantis said they are aware of it and that it is a civil matter and not an issue for the Town.

Recess - Motion: (King, second Laferte) to recess the meeting until 6:30 p.m. passed 6-0 at 6:12 p.m. The meeting reconvened at 6:30 p.m.

PUBLIC HEARINGS- 6:30 P.M.

Public Hearing: In accordance with RSA 231:158, II, Eversource Energy requests a public hearing with the Planning Board to obtain the Board's consent to allow the removal of brush and limbs which are located eight feet to the side, ten feet below or fifteen feet above conductors on Poor Farm Road. Trees which represent a threat to Eversource lines or other equipment because of decay or other defect will be removed on a case by case basis. Poor Farm Road is designated a scenic road by the town.

Eversource Eastern Region Arborist Robert Berner told the board that Eversource is seeking approval from the board to remove a list of trees and that they would contact each individual landowner and seek their approval before the start of work on their property.

He said Eversource has contracted with Lewis Tree Service to perform the actual clearing of the trees and the work is expected to begin later this summer and last into early fall.

Mr. King asked if every tree to be cut is marked and if they only plan to work on the section that connects with Meaderboro Road.

Mr. Berner said the trees to be cut are marked with blue and white ribbons and the "lower" portion of Poor Farm Road is part of a different circuit which may be trimmed next year.

Mr. Laferte said in a letter to the board it states that the clearing contractor must contact each landowner prior to the start of work on that property and asked if the landowner approval is done verbally or if they must sign a written document.

Mr. Berner said that at least 45 days prior to the start of the trimming work, the landowners will receive a card informing them of the scheduled work and if they don't return the card within 45 days that is considered implied consent under the RSA which gives the company the right to go ahead and trim. Individual tree removals will be negotiated in person with every property owner he said.

Mr. Laferte said he was concerned about removal of trees if they don't hear from the landowner.

Mr. Berner said that technically they can go forward with the trimming and removal of trees and brush but they do not remove trees without the consent of the property owner.

Mr. Laferte asked how often the trees and brush are trimmed or removed.

Mr. Berner said the company uses a four year cycle where each individual circuit is trimmed every four years. The work within Farmington is somewhat spread out so they are in town every year he said.

Mr. Kestner noted that the form that is mailed to property owners does not have a place for the landowners to deny permission to cut or trim on their land.

Mr. Berner said the form is written to encourage a dialog with the landowner as the RSA says they must give the property owner the right to request a consultation with the company.

Mr. Kestner asked where in the RSA's say that the property owner lost the right to say no to the tree work and noted that in the documents given to the board there is an entire sheet where the permission of the property owner is missing.

Mr. Berner said he did not know why there is no space for a check mark for "no" as he did not design the form. He said he has seen plenty of forms returned with the instructions not to cut on their property handwritten on the form.

Mr. Kestner said Eversource may have good intent but sometimes the contractors have a tendency to go over the stone walls onto private property and help themselves.

Mr. Berner said the stone walls do not define the company's clearance zone.

Mr. Kestner said the company determines the clearance zone from the center lines on the poles but if the poles are abutting the property two to three feet outside the stonewall the company's clearing limits don't supersede the aerial rights of the property owner's stonewall.

Mr. Berner said that in the majority of cases they assume the property owner owns to the middle of the road so any trees that are inside or outside the stonewall belong to the property owner and before any trees are removed they will speak to the property owner.

Mr. King asked what happens if the landowner writes on the form that they do not want any trimming on their property.

Mr. Berner said the company has a "Permission Specialist" who will contact the property owner and if the owner still says no then the Specialist's Supervisor will contact the owner. If they still refuse permission then Mr. Berner will have a discussion with the landowner. If all that fails to gain permission then the answer is no he said.

Mr. King asked what would happen if a landowner refuses permission to cut or remove a tree and it falls and pulls down a power line.

Mr. Berner said they would put the line back up but their goal is keep that from happening.

Mr. King asked how often they are unable to get permission for trimming from a landowner.

Mr. Berner estimated that about 2% of their customers refuse entry across the state.

Mr. Henry said if his neighbor's tree falls on his house the neighbor is responsible for the damage and asked if the landowner is liable for damage to Eversource's equipment if his tree falls on the lines or equipment.

Mr. Berner said he was not a lawyer but he did not think the landowner would be liable as he has the right to refuse cutting of his trees. The company does not go after their customers to seek reimbursement for damages in this case he said.

Mr. DeSantis asked if the company replants trees that have been removed.

Mr. Berner said that as a rule the company does not replant the trees.

Mr. Berner said they have identified 43 trees along the road with 18 of those trees belonging to one property owner. He said the majority of the trees to be cut are Ash and some are already dead while others are declining and although not an imminent problem they will be a problem in the future he said.

Mr. King asked if a landowner has a tree that is a potential danger to the power lines if he could contact Eversource and request the company take a look at the tree.

Mr. Berner said that someone will respond to the request and make an assessment of the situation and noted that is one of Mr. Fontane's primary functions with the company.

There were no further questions/comments from the board.

Chairman Kestner opened the hearing for questions/comments from the public at 6:43 p.m.

There were no comments from the public present.

Chairman Kestner closed the public portion of the hearing at 6:45 p.m.

Chairman Kestner then called for a motion.

Motion: (Henry, second Laferte) to give Eversource the go ahead to do the work passed 6-0.

Mr. DeSantis said the next three items on the agenda are "interlocked" and suggested that the board consider the two boundary line adjustments as one item and the amended site plan review as one item.

Chairman Kestner agreed and read aloud the following applications:

Application for Minor Boundary Line Adjustment: Property #1: Map R19, Lot 15-1; Christopher Knight, owner; -25,710 s. f. and Property #2: 25 Main Street; Map R20, Lot 001; North & South Investors LLC, owners; +25,710 s. f. Both lots are in the Commercial Business District.

Application for Minor Boundary Line Adjustment: Property #1: Map R19, Lot 15-2; Christopher Knight, owner; -83,630 s. f. and Property #2: 25 Main Street; Map R20, Lot 001; North & South Investors LLC, owners; +83,630 s. f. Both lots are in the Commercial Business District.

Tim Bernier of TF Bernier, Inc. said that the property owned by Chris Knight was recently subdivided and approved for the installation of a solar field which is currently under construction. He said the abutting property is owned by Mr. Johnson which is the current home to 3 Phase Power who rent the property from North & South Investors, Inc.

He said 3 Phase was looking for more storage space as the other lot they were renting fell through. After Mr. Knight received approval for the solar field he was approached by Mr. Johnson who asked if there was any land on his property that is unused.

Mr. Bernier said there is approx. 1 acre of unused land outside the wetland buffer that is not part of the solar field and it was agreed to transfer this piece of the Knight property to Mr. Johnson which is the reason they are before the board seeking a lot line adjustment.

He said a small portion of land will be taken from Map R19, Lot 15-1 (25,710 square feet) and Lot 15-2 (83,630 square feet), merged together and added to Map 20, Lot 001. Map 20, Lot 001

will increase in size from 5.6 acres to 8.11 acres he said.

Mr. Bernier said there are two applications because there are two lots involved in the transfer and lot line adjustments and there will be one deed that transfers the property from one owner to the other.

Mr. Laferte asked about the sign posted at the entrance road to the solar field that states it is the "Farmington Pit". He said when the lot was closed as a pit it had a state permit which gave the closing elevation for the site and the site was closed at 3 feet below the state permit elevation.

Mr. Bernier said it is a directional sign for the truck drivers. They are re-grading the site and there is excess material there that was presented as part of the solar field site plan.

Mr. Laferte said he saw two Severino tractor trailers enter the site, get loaded and then leave the site so it is operating as a pit.

Mr. Bernier said that 20,000 yards of material was removed from the hill on the property as you can't put solar panels on a hill particularly on one that faces north. He said the removal of the hill and that the excess material would be removed from the site was on the plans presented to the board. They obtained an Alteration of Terrain (AOT) permit from the state to conduct the re-grading of the site to construct a flat field where the solar panels will be installed and nothing else is going on there he said.

He apologized for the sign which was put up by the contractor they hired to remove the materials. Mr. Laferte said he ran the meeting when the solar field was before the board and they did not say there would be any material removed from the site.

Mr. Bernier said they are not removing any material from what was the floor of the former pit but from the hill right in the middle of the solar field as was presented to the board.

Mr. Laferte said they did not say they planned to take any material off the site.

Mr. Bernier said when you have an uneven site you either bring in material or take material out.

Mr. King said or they could re-grade the site with the material.

Mr. Bernier said the hill is approx. three quarters of an acre in size and if they were to flatten it, it would take up 10 or 12 acres that they would have to restore which would be very expensive.

Mr. King said if they have an excavation permit to remove 20,000 yards of material.

Mr. Bernier said if you are developing the property you must get an AOT permit which is more restrictive and has a lot more criteria involved with it.

Mr. Bernier said that Mr. Knight will have the contractor take the sign down or change it to say it is a construction site for the solar field.

Mr. King asked if there are any lending institutions that hold a mortgage on either property that need to approve of the proposal.

Mr. Kestner said that is part of the lot line adjustment regulations and also noted that the Certified List of Abutters did not list any abutters.

Mr. Bernier said the abutters are listed on a separate sheet of paper he provided to the board

because his company no longer owns a typewriter to type the information to fit on the form. Mr. Knight and Mr. Johnson said there are no mortgage holders on either of their properties. Chairman Kestner asked if the mortgage holder information was included on the application. Mr. DeSantis said that information is part of his memo to the board.

Chairman Kestner asked if there were any other questions from the board.

He then opened the hearing for public comment at 7 p.m.

There were no comments/questions from the public present.

Chairman Kestner closed the public portion of the hearing at 7:02 p.m.

Motion: (King, second Henry) to accept the applications as substantially complete passed 6-0.

Motion: (King, second Henry) to approve the minor boundary line adjustments for Map R19, Lot 15-1 and Map R20, Lot 001; and Map R19, Lot 15-2 and Map R20, Lot 001 passed 6-0.

Application for Amended Site Plan Review by North & South Investors LLC: To expand existing vehicle and equipment parking area. Property is located at 25 Main Street (Map R20, Lot 001); Commercial Business District.

Mr. Bernier said there is about 1 acre of commercially usable land outside the wetland buffer contained in the land that was just approved for transfer from Mr. Knight's property to Mr. Johnson's property. He said the current configuration of the Mr. Johnson's lot consists of a commercial building (3 Phase Line Construction, LLC), the main parking and storage area and a second upper level parking/storage area.

He said they propose to lower and re-grade the upper parking/storage area and use that material to fill the section of land added to the property by the lot line adjustment so that all of the second parking/storage area will be relatively flat.

Mr. Bernier said there was some concern about run-off from the property to the Cocheco River that runs by the rear of the lot. He said they propose to add more fill at the rear of the lot and grade it down away from the river to a retention swale. This will keep all of the run-off in the parking area and there may be some puddles when the ground is frozen which could be handled by the addition of leaching structures if necessary he said.

He said the company stores bucket trucks, ATV's, construction back hoes and related equipment in the parking area but there will not be any bulk storage of volatile organic compounds or fuel in the parking area. If one of the truck's fuel tanks was to rupture the contents would not go over the bank into the wetlands or the river and will stay in the parking area he said.

Mr. King asked where this equipment is currently parked.

Mr. Bernier said they leased space in the lot across from them on Main Street but the owner of the lot did not have permission from the Town for that use. The equipment has been returned to the 3 Phase site and is parked "everywhere" and they are in desperate need of someplace organized to put them he said.

Mr. Laferte asked if the building on the abutting property to the right of this lot will still be accessible from the common driveway shared with 3 Phase.

Mr. Johnson said he owns that property too and it will not be affected by the proposed changes to the 3 Phase property. He said the building will still be accessible via the dirt access road off of the common asphalt driveway.

Mr. Bernier said that currently the only way to access the upper storage area is through the abutting lot. He said that by re-grading the property they can access the upper second parking area from the main parking area and eliminate the need to go through the other lot.

Mr. Kestner said there are no notations as to the water calculations, elevations, cross sections or any details on the plan in regards to the proposed detention pond.

Mr. Bernier said there isn't going to be a constructed detention pond on the site as the water flows are too low. These are all excessively well drained soils and all of the grades are on the plan. If it is built to the plan the drainage has no choice but to go to into the retention area he said.

Mr. Kestner said the calculations should be included as part of the application and on some type of detail sheet as the Code Enforcement Officer is the one who will have to verify that it was constructed as it was indicated on the plan. The site plan regulations require that for any drainage structures to be constructed there must be some type of engineering documentation provided with the plan as well as some basic details on the plan he said.

Mr. King said that the cross section and a basic drainage analysis of the swale area should be part of the file and be included as a Condition of Approval.

Mr. Kestner said that a silt fence or hay bales are not included at the rear of the parcel to protect the sensitive wetlands as the re-grading work is being done.

Mr. King said any temporary measures as part of the construction protections should be noted on the plan and adhered to by whoever does the actual construction.

Mr. Laferte asked if it would be appropriate to continue the hearing for 30 days to give the applicant a chance to provide the requested information.

Mr. Kestner said it is up to members to determine if the application as presented is complete or not complete.

Mr. Johnson said there is an issue with the storage of equipment across the street from them and that he did not want to see 3 Phase leave town especially after being here for 40 years. He said they would like to move forward with the plan and noted that there are pieces of equipment stored in locations around town and said they will do everything they have to do.

Mr. Laferte said they need to understand that there are rules the Planning Board must abide by and that Mr. Bernier knows what they have to do.

Mr. Henry asked if they could list the additional information required as Conditions of Approval and have Mr. DeSantis make sure that everything is included on the plans and then give the applicant the go ahead to begin work.

Mr. DeSantis said he said he would be appreciative if the board would agree to allow him to sign off on that the Conditions of Approval were met. He recommended that the following conditions be included if the application is approved:

- 1). Stockade privacy fencing to separate the residential lot from the commercial property;
- 2). Retention or planting of trees to further separate the residential lot;
- 3). No bulk storage of VOC's.

Mr. Johnson said they discussed the fence with the abutter and she did not have a problem with the planned chain link fence which would include "privacy slats". He said there are enough trees there that the abutter won't even see what they are doing on his property and that she was fine with the fence as they proposed.

Mr. Henry asked what natural barriers currently exist and what will exist after the project is completed.

Mr. Bernier said the existing chain link fence runs along the parking lot to the left of the 3 Phase building and would be extended to run along the side and rear boundary lines of the residential lot.

Mr. Henry asked what is on the back of the residential lot.

Mr. Bernier said the middle of the residential lot is fairly open and there is a pretty dense grouping of hardwoods and pine trees at the rear portion of the lot. There is a berm and fencing on the other side of residential property that abuts the solar field he said.

Mr. Fisher asked Mr. DeSantis if the residential property owner requested that a stockade fence be installed between the 2 properties.

Mr. DeSantis said they discussed the fencing and that the ideal solution would be a stockade fence.

Mr. Fisher then noted that Mr. Johnson said he spoke with the abutter and that she told him that she would accept a chain link fence.

Mr. Johnson said she told him they were going to push for a stockade fence. He said he told her that a wooden fence must be maintained and that it will rot but that the 8 foot chain link fence has been there for 20 years. He said she did not express any objection to the chain link fence with the slats.

Mr. King asked Mr. Bernier to include the extent of the privacy fencing on the final plan.

Mr. King asked if the only storage of fuels would be whatever is in the vehicles and that there would be no bulk storage of fuels.

Mr. Johnson said there will also be small "day" fuel tanks that are carried on the back of the trucks to fuel the equipment at the job site.

Motion: (King, second Fisher) to accept the application as substantially complete passed 5-1 (Kestner opposed).

Chairman Kestner then opened the hearing to public comments/questions at 7:30 p.m.

Mrs. Place said the board makes a lot of hoops for the business owners who are very lucrative

business owners in town for a very long time. She said she understood the board has regulations they must follow and that she was not asking they be waived but that contingencies could be added to his application and allow him to move forward.

There were no other public comments.

Chairman Kestner closed the public portion of the hearing at 7:32 p.m.

The board then discussed what should be included as conditions of approval.

Mr. Bernier added that there will be more material than is needed to re-grade the site so there will be some material that leaves the site.

Mr. Kestner said that as long as the applicant obtains an AOT permit he can move forward with his plans to take materials off site.

Mr. Bernier said they will just need to file the tax form and pay the taxes on the materials. He estimated that about 3,500 yards of material would be taken off site.

Mr. Laferte also noted that the address on the application is incorrect and needed to be changed from 39 Main Street to 25 Main Street.

Motion: (King, second Henry) to approve the amended site plan review application for North & South Investors, Map R20, Lot 001 with the following Conditions of Approval:

- 1). The chain link fence with privacy fencing to be installed and noted on the plan as presented;
- 2). Retention of trees to separate the residential lot;
- 3). No bulk storage of VOC's or fuels in rear parking area;
- 4). Provide drainage calculations, swale cross sections, temporary best management practices construction protections;
- 5). Correct the property address on the application.

Vote: The motion passed 6-0.

Any Other Business before the Board: None

Adjournment:

Motion: (Laferte, second Place) to adjourn the meeting passed 6-0 at 7:45 p.m.

Respectively submitted

Kathleen Magoon

Recording Secretary


David Kestner, Chairman