

Town of Farmington  
Planning Board Meeting Minutes  
Tuesday, August 21, 2018

**Board Members Present:** Chairman David Kestner, Vice Chairman Martin Laferte, Stephen Henry, Charlie King, Selectmen's Rep. TJ Place, Rick Pelkey

**Board Members Absent:** Secretary Bill Fisher- excused

**Others Present:** Town Planner Dan DeSantis, Joe & Janet Gray, Packy Campbell, Ryan Campbell, Dana Joy, Ed & Carolann Weagle, Sheridan Folger, Samantha Folger, Richard Folger, Wayne Baribeault, P. E. Steve Haight, Civilworks, James Hayden, Berry Surveying, Attorney Alec McEachern, Bill DePaul

**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 Minutes:**

August 7, 2018- Page 3, Map R03, Lot 02, seventh line- strike "to" after "responsible"; Page 7, B). Zoning, fifth line from bottom of the section – strike "if" after "suggested", change "met" to "meet" and add "if" before "Mr. DeSantis"

Mr. Henry said Ms. Sanger's term ran out in March and she did not request to renew it so she should not be considered as an alternate member or as absent.

Chairman Kestner asked Mr. DeSantis to remove Ms. Sanger from the list of board members.

**Motion:** (Laferte, second Henry) to accept the minutes as corrected passed 6-0.

**Voluntary Lot Merger Application** submitted by Jacqueline & Richard Taylor for Tax Map R06, Lot 102 and R06, Lot 103. New lot number will be R06, Lot 103.

Mr. DeSantis said the mortgage holder of this property is located in Virginia Beach, VA and has been very slow to agree to the lot merger. He suggested that approval of merger be contingent on receipt of a letter of consent from the mortgage holder.

Mr. Kestner said consent of any mortgage holder is already a condition of approval as part of the application and is included in RSA 674:39-a Section II.

**Motion:** (King, second Pelkey) to approve the voluntary lot merger of Tax Map R06, Lot 103 and R06, Lot 102 conditional upon receiving written consent from the lien holder passed 6-0.

**Conceptual Plan by:** Packy's Investment Properties (Tax Map R03, Lot 008) for property located at 67 NH Route 11. The applicant is proposing a change in the building sizes and layout that decreases overall square footage for an existing self storage facility. The parcel is located in the

Commercial Business (CB) District.

Mr. Campbell said he bought the Taylor Rental property 2 months ago and asked the Code Enforcement Officer Dennis Roseberry for a review. He said Mr. Roseberry's letter informed him of 2 problems at the site.

He said the first problem is that the plan was never approved for outside storage but there was outside storage taking place at the site. He said removed the items and does not plan to ask for an amendment to the site plan approval for outside storage.

Mr. Campbell said an amendment to the prior site plan approval is needed because the existing third building was supposed to be part of Phase II of plan and should be located as the second building down in the middle row of buildings. The building is 120' x 20' in size instead of the approved 120' x 30' and is 90' away from the Phase I buildings instead of being 30' away from those buildings as stated in the approved plan.

He said he is proposing to build one row of building instead of two buildings with a 30' center right-of-way as shown on the existing plan.

The proposed buildings would be 30' wide by 200' long which will allow for more turning radius around the ends of the buildings and more space between the buildings and the detention pond. The current center lane will be removed he said.

Mr. Campbell said these changes result in a little smaller project than was previously approved and that he was before the board for a conceptual design discussion only. He added that if he wants to get another building permit without getting an amendment to the approved plan he would have to move the building that is in the wrong spot which he would rather not do.

Mr. Campbell then showed the conceptual layout design drawing to the board and said the amended plan results in less pavement, less impervious surface and less building area but still lets the project be built similar to the way it was originally intended. He said if the board likes the design he would come back next month for an amended site plan hearing unless further changes are needed.

Mr. King asked when the plan was originally approved.

Mr. DeSantis said it was approved on May 23, 2000.

Mr. King asked if Mr. Roseberry had any issues based upon the current zoning of lot as there have been changes in the zoning ordinances since 2000.

Mr. Campbell said changes to the zoning are irrelevant because the use is grandfathered. He said he didn't ask that specific question of Mr. Roseberry and Mr. Roseberry didn't point out any zoning issues.

Mr. Kestner said the board did not receive Mr. Roseberry's letter in their meeting packets.

Mr. DeSantis said that he also did not receive the CEO's letter.

Mr. Campbell said he was before the board as a response to Mr. Roseberry's letter and then gave copies of the letter to the board.

Mr. Henry said it appears that what were previously Phase III and IV have been combined into

Phase III.

Mr. Campbell said he was proposing that Phase II would be the first building which is 200' x 30', Phase III would be the second 2 buildings which would be also be 200' x 30' and Phase IV would be the last building on the end of the lot as shown on the drawing. The approved plan calls for phasing of the project but there were no dates included for each of the 5 phases. There would only be 4 phases as there are only 4 more buildings to be built he said.

Mr. Campbell said the original approval called for the installation of the retention basin before Phase IV was constructed but he plans to grade and level the site and put the basin in when his first building is put in to save time and expense in bringing in heavy equipment to the site. He said Mr. Roseberry said he can do some site work now and that he must submit engineered plans to him to get a building permit.

Mr. Campbell said he did not include the topography lines on the drawing but would include them for next month's meeting if the board wants to review them. He said the reason why the third building is in the wrong spot is because of the drop in elevation on that part of the site and the need for many truckloads of fill to level it out. Reducing the size of buildings and the pavement allows them to work with the grade of the land and not fight against it he said.

Mr. Kestner asked about the timeframe for the installation of the retention pond because of Mr. Campbell's plans to conduct clearing, cutting and other site work.

Mr. Campbell said the approved plan does not call for it to be done until Phase IV but he would agree to put it in before the Phase III work begins as a condition to approve the amendment.

Mr. King said these details would be addressed when Mr. Campbell makes formal application for the amended plan and that conceptually he did not see any issues with the proposal.

Mr. Campbell said he has already submitted an amended site plan application and wanted to see if the board had any issues with the concept first. He said the site doesn't really need a detention pond but that he that he wasn't there to argue to remove it from the plan.

Mr. Kestner said it wasn't a question of the water but a question of the oils and solvents from the vehicles driving around the property.

Mr. Campbell said the detention pond is designed and they will have one but he wanted to stick to scope of the project in regards to the layout of the buildings.

Mr. Kestner said the proposal is a good re-use of the site based on the slope conditions present there. He asked Mr. Campbell to provide the topography of the site for the board to review.

Mr. King said his concerns will be the detention pond, pavement, impervious surfaces, phasing and what is reasonable.

Mr. Campbell said he did not want to come back next month to find out about more changes needed when he could have found out about it ahead of time.

Chairman Kestner suggested he review some additions made to the site plan regulations since the plan was first approved.

Mr. Campbell said if the board planned to request any changes to the plan that they check with

Mr. DeSantis and Mr. Roseberry first because they were clear that this is an amendment request not a “re-birth” of the plan and not to meet today’s standards.

**Correspondence:**

**Air B&B’s:** Mr. DeSantis said he received a memo from Fire Chief James Reinert regarding the potential for life safety issues at the bed and breakfast rentals in town. He said his research shows there are 4 such rentals in town. He said he discussed the matter with the Chief and they are working on a recommendation to require annual Fire Dept. life safety inspections of those properties that will probably need to go before the town at Town Meeting. He said he will keep the board informed as the matter moves forward.

Mr. Kestner asked if this would be a code enforcement issue as it concerns health/safety issues.

Mr. King asked if they planned to come forward with a recommendation for zoning changes.

Mr. DeSantis said no proposal for zoning changes was planned and that you can’t stop someone from having a guest in their house.

Mr. King then asked how this comes under the Planning Board’s purview.

Mr. DeSantis said the Chief asked him to bring it to the board. He said he did not think the issue should be complicated and that he thought that an annual inspection would solve any health and safety issues.

**Gravel Pit Compliance Letters** - Mr. DeSantis said he provided the board with copies of the letters he sent to Malcolm Bradsher and to Pike Industries.

Members said they did not receive the letters in their packets for review before the meeting.

Mr. DeSantis suggested they review the letters at the next board meeting.

**Recess- Motion:** (Kestner, second Henry) to take a 5 minute recess passed unanimously at 6:30 p.m. The meeting reconvened at 6:35 p.m.

**PUBLIC HEARINGS – 6:30 P.M.**

**CONTINUED CASES:**

**Application for Minor Site Plan Review by Joy’s HVAC Services, Inc. (Tax Map R03, Lot 10):** The applicant proposes to locate their heating, air conditioning, refrigeration service and installation company at the site. The parcel is located at 6 NH Route 11 and in the Commercial Industrial Business (CIBO) District. The parcel is owned by Corwin Real Estate Investment.

Chairman Kestner said there was an oversight back in Feb. and asked Mr. DeSantis to speak to the matter.

Mr. DeSantis said that the (Feb. 21, 2017) meeting minutes show that the Planning Board did accept this application as substantially complete but not that it was voted for approval. He said the applicant is in the process of purchasing the property and that the bank is asking for information regarding the Minor Site Plan Review. He said he went back to the video tape of the meeting and it is clear that the board not only accepted the application as substantially

complete but also approved it. He also looked at the contingency which was the submittal of an approved parking plan which Mr. Joy submitted today for the board to review. Mr. Joy will close on the property on Thursday he said.

Mr. Joy said the lot would have been striped by now except for all of the rain and it will be done as soon as possible. He said he did not know he needed a letter until the lawyers got together with the closing documents 2 days before the closing and told him he needed a letter.

Mr. King said that some of the present board members were not on the board for the Feb. 21, 2017 board meeting when this application was reviewed and asked if they were able to vote on the motion to approve the minor site plan review.

Mr. DeSantis said the motion has been passed.

Mr. King said they are amending the minutes of that meeting and some of the members weren't privy to the original minutes and weren't at the meeting and asked if it is procedurally appropriate for them to consider it and vote on it.

Mr. DeSantis said the minutes are the minutes and the only change is that the video tape has shown that the application was approved. He asked the board to amend the minutes to show that this application was approved.

Mr. Henry said he has not seen the Feb. 21, 2017 meeting.

Mr. DeSantis said if he did not believe the staff there is a bigger problem.

Mr. King said he just didn't want to do something that is procedurally wrong.

Mr. DeSantis said he was asking to them to correct an error that the minutes did not reflect the application was approved.

Mr. Pelkey asked if they could correct the error by making a motion based on the evidence presented to them. He said they wouldn't be amending the minutes but that based on the evidence given to them by the staff they all could concur that this is an approved plan.

**Motion:** (Pelkey, second Henry) based on the evidence presented to the board, the minutes of the Feb. 21, 2017 meeting and the input from staff and the parking plan that was presented to us which was a condition of the original approval that the board considers this application an approved plan;

**Friendly Amendment:** (by Mr. King) to amend the minutes to include the notations included in the staff memo of what was in the video tape but not in the minutes of the meeting.

**Vote:** The motion passed 6-0.

**Motion:** (King, second Henry) to take a 2 minute recess to allow the Chair to sign the Notice of Decision and to have staff copy it passed unanimously at 6:45 p.m. The meeting reconvened at 6:47 p.m.

**Application for Site Plan Review by: Joseph and Janet Gray (Tax Map R18, Lot 005) for property located at 36 Brown Road.** The applicant is proposing to establish a commercial organic farm. The parcel is located in the Rural Residential (RR) District.

Mr. Gray reviewed the materials he provided in answer to the board's questions at the last

meeting. He said this proposal is not a retail operation or a "pick your own" berry or Christmas Tree farm. It is a delivery operation where he grows the produce and delivers it to his customers he said.

Mr. Kestner said at the previous presentation to the board there was some interpretation that the Gray's would potentially be taking on site customers and selling produce to them. The original drawing presented to the board included chestnut trees, orchards, and berries he said. Mr. Gray said he laid out the whole plan so they never have to ask these questions again. He said most of the property will be turned into a tree farm in the future and that he has already spoken with someone from the state and an arborist with regards to that process.

Mrs. Gray said they redefined the plan as the board asked them to.

Mr. Gray said there will be no customers coming to site although he might show the facility or the orchard. He said that he plans to build a greenhouse which has gotten approval from the Technical Review Committee (TRC).

Mr. Kestner said that based upon the Attorney's information that was included in the members' packets that the Gray's are the owners of the easement there.

The Gray's nodded in agreement with Mr. Kestner.

Mr. Kestner asked if Mr. DeSantis sent the Gray's lawyer's informational packet to the Town's attorney for review and an opinion.

Mr. DeSantis said he did not send it to the Town's attorney.

He said when he went up the road at the site he went up a 15 foot right-of-way but when he studied the information provided it states that it is really a 50 foot right-of-way.

In a memo to the board Mr. DeSantis said there is a road agreement to "share equally in the costs for labor and materials to maintain Brown Road in a manner that is accessible during all four seasons of the year to regular vehicular traffic by **vehicles designed to operate on public highways.**" (emphasis by Mr. DeSantis). It's a private road, there are easements and agreements and he did not know what the Planning Board could say or do he said.

Chairman Kestner agreed.

Mr. Gray said other items of note included the tax bills from the Town back from when the property was subdivided, when the right-of-way was granted the property was being used for an agricultural purpose so this use is no different, there were taxes on livestock and the property was referred to as the timber lot.

Mr. Pelkey said if the TRC thought it was a change of use they would not have given approval to install a greenhouse and would have required him to come before the Planning Board to obtain approval for a change of use.

Mr. Gray said he was told that the simple (minor) site plan review was the first step to getting a building permit and that is why they are here.

Mr. King said the right-of-way is 50 feet and it was an approved plan and there is a road agreement in place denoting the responsibility. He said what they are proposing is a little more

use than there has been in the past.

Mr. Gray said there will be no increased traffic to the site. He said he and his wife travel to work and back every day and that the vehicle to be used for his business is the same size as the pickup truck that he currently uses.

He said traffic should decrease after he retires in the next 3 years and this operation will then become his main employment. He said at peak performance there will be 4 deliveries a week and less vehicular traffic at the end of the day.

Mr. King said Mr. Gray's use of the property may be more than the previous owner. He said there is sufficient right-of-way for what they are proposing, as it states in the road agreement, for those vehicles that are able to be on Class V road or better. The parties will have to work together per the road agreement and if they can't the issue should go to mediation but the board can't into the terms of the agreement because it is a recorded document he said.

Mr. Pelkey said at the previous meeting the application was not accepted as substantially complete because the board had questions of the applicants. He said the board did not have the application in front of them at this meeting so he did not know what modifications were made to the application.

Mr. Gray said he did not make any changes to the application so it is still the same.

Mr. Kestner said the board needed more information pertaining to the private road, the width of the right-of-way and the maintenance agreement as none of the members had copies of them to review. The application that was presented to the board was hand drawn over a tax map indicating the location of trees, berries and the barn he said.

Mr. Haight gave the board copies of the Gray's full application with the supporting documents from the attorney including the easements and access rights that go with the land. He displayed an overview of the entire parcel and also provided copies of the plans to the audience.

Mr. Haight said Brown Road is located off of Chestnut Hill Road and is a private road classified as Class V or better that comes across to an easement leading into the Gray's property.

He said there are two 18-inch culverts located about 50 feet from the entrance to the Gray's property that he inspected after the recent rainfall that were found to be operating exceptionally well. There is some wash out of the roadway that is a grading issue and if the culverts are properly maintained the water will be flowing right along with no problems he said.

Mr. Haight then pointed out the proposed location of the greenhouse, an equipment shed and a gravel area intended for parking on the second plan.

He said the existing barn will be utilized and the greenhouse on a concrete slab will be located next to the barn. A vertical hydroponic system will be used to grow the crops in the greenhouse where the water comes in, the fertilizers are added to the water and the water is recycled so everything is contained within the system. He said the equipment used for deliveries will be a standard van and there is plenty of access for that.

Mr. Haight said there will be no impact on the drainage system as it is already a gravel area

where they will be putting the building. He pointed out the gravel area to the right of the existing barn as the proposed location of the greenhouse in aerial photos that were taken two weeks prior to this meeting.

Mr. Kestner asked for the location of the 2 culverts on the subdivision plan.

Mr. Gray pointed out their location on his copy of the subdivision plan.

Mr. Henry said the culverts are also marked on the second plan.

Mr. Gray said that he cleaned out the culverts after they overflowed this past winter because they were full of debris and that going forward he will maintain the culverts.

Mr. Haight said it the Gray's responsibility to maintain from Brown Road to their property and those culverts are Mr. Gray's responsibility.

Mr. Kestner said at the last meeting with the applicants there were public comments about wash out of the road and that he was trying to understand the location of the culverts in relation to the easement deed and the site plan that was approved in 1985. Based upon the maintenance agreement only the lots on Brown Road are involved with the maintenance of the road and the attorney was very specific that those parcels are jointly responsible he said.

Mr. Haight said the attorney was very clear that Brown Road maintenance agreement is between everyone who lives on Brown Road and has access. The easement that they own is Mr. Gray's responsibility and those culverts are in the equation he said.

Mr. Henry requested that the attorney's letter and the other information provided be attached to the application before they consider if the application is substantially complete. He said it was not part of the original application and the applicants have not reapplied so he wanted to make sure it could be attached to the original application.

**Motion:** (Pelkey, second Henry) to accept the application as substantially complete with the additional information provided at today's meeting passed 6-0.

Chairman Kestner opened the hearing for public comment at 7:10 p.m.

Some of the abutters requested copies of the information and some board members suggested they be provided with the attorney's opinion and the road maintenance agreement.

Mr. Haight suggested that they copy his packet with the application and all of the supporting documentation.

Mr. DeSantis said that is a lot of copying and that he would only provide copies of the maintenance agreement and the attorney's letter to the abutters. He said anyone wanting more of the information could come into the Planning Dept. office and spend as much time as they would like reviewing all of the information.

Mr. Henry asked if it was possible to table the matter to allow the abutters some time to read the information while the board moves on to the next case.

**Motion:** (Henry, second King) to extend the hearing until after the next case to allow the public the opportunity to read the additional documentation that was included in the board's packets;

**Discussion:** Chairman Kestner explained that Mr. DeSantis is making copies of the additional

paperwork that was provided to the board involving the lawyer's research of the easement dating back to the 1920's and 1945 as well as the layout of the subdivision plan. He said the board will temporarily table additional public comment on the application until after the next case and then revisit this application to give the abutters a chance to read the additional information. The abutters would have an opportunity to ask any questions or comment and then the board would make a decision on the application at that point in time he said.

**Vote:** The motion passed unanimously.

**Motion:** (King, second Pelkey) to take a 5 minute recess passed 6-0 at 7:20 p.m. The meeting reconvened at 7:25 p.m.

### **NEW CASES:**

**Application for Minor Subdivision by: Edward J. Weagle Irrevocable Trust (Carolann Weagle, Trustee; Berry Surveying, Agent)** to subdivide Map R24, Lot 009; 271 Meaderboro Road, into two lots. Map R24, Lot 009 to be 5.48 acres; proposed Map R24, Lot 009-0001 to be 8.68 acres. Property located in the Agricultural Residential (AR) District.

Mr. Hayden said the applicant is looking to subdivide the existing lot into 2 lots. He said Berry Surveying has been on site and has done a topographic survey of the existing house site and the buildable area of the proposed second lot.

He said the applicant is also submitting a waiver request as they did not conduct a full topographic survey of the entire lot to save time and unnecessary collection of data that would not be needed by the board to approve the subdivision.

Mr. Hayden said on the second plan the board could see where the topographic survey was conducted and where the proposed house and well would be located and then asked for questions from the board.

**Motion:** (King, second Henry) to approve the waiver request as submitted in writing of the Subdivision Regulations Section 8 (H) (18);

**Discussion:** Mr. King said the request is consistent with what the board has allowed on larger lots and he did not see any reason not to accept the waiver request.

**Vote:** The motion passed unanimously.

**Motion:** (King, second Laferte) to accept the application as substantially complete passed 6-0. Chairman Kestner opened the hearing for public comment at 7:30 p.m.

Abutter Bill DePaul said he was in favor of the plan and does not have any issues with it.

Mr. Weagle asked about obtaining a street number for the new lot.

Mr. DeSantis said that after the new house is built the owner should come to the Town office and they will do an E911 check as part of the Certificate of Occupancy requirements.

Mr. Henry noted that if the lot was for sale they could give it a street number for advertising of the sale of the lot.

Mrs. Weagle said they are not selling the lot.

Mr. King said the new lot will have a map and lot number.

Mr. Kestner said the numbering system is based on linear footage going up the road, whether the house is on the left or right side of the road and where the driveway comes out onto the road. He asked if there is currently no house on the proposed newly subdivided parcel.

Mr. Hayden said that is correct.

Mr. Kestner asked if their existing residence is on the portion of the lot that comes off of Meaderboro Road.

Mr. Hayden said that is correct.

Mr. Kestner asked about the easement for Public Service crossing the parcel and if there is any delineation in reference to providing future access to that location. He said the easement shown on the plan is only 20 feet wide and goes over a stone wall and through a field to the existing service. He asked how they expected any utility company to get back into that location for any repairs or maintenance involved.

Mr. King asked if that is the standard width used for easements and if they just work with it and use what they need.

Mr. Kestner said that is the standard width but he does not know what the actual easement deed says other than an egress in and out. He said that currently Mr. Weagle owns the entire parcel which would allow a utility company to have access to the line but once these 2 parcels are broken accessibility to that line could be a problem unless there is a means to get to that area.

Mr. King said if it's an easement noted on the plan that it would go with the land.

Mr. Kestner agreed but added that there needs to be some type of additional accessibility for the new parcel in benefit of the secondary parcel.

Mr. Weagle said access going up the original driveway (off Meaderboro Road) goes to where the line comes in. You don't have to go over the stone wall because you can access the line from the lot where the existing home is he said.

Mr. DeSantis said they intend to build their retirement home on the newly created lot and sell the existing home and its lot. He said that unless there is a utility easement on the lot to be sold to provide access to the other easement on the new lot they will have to move the stone wall on Poor Farm Road so they can use the easement.

Mr. King asked if it could be handled when he sells the property by adding language in the deed that they need to provide access to the line from the existing driveway. The new owner may not want to give them access to the power line and say they have to open up the stone wall unless there is language in the deed requiring access to the line.

Mr. DeSantis said they could do that.

Mr. Kestner said the potential exists that any subsequent buyers of existing home may not be friendly so you are basically covering your behind.

Mr. Weagle said the other option would be take the stone wall out.

Mr. Kestner said there may also be a need for culvert across the ditch line on Poor Farm Road

to enter the new lot and potentially some of the field could be lost in opening up the easement so the any equipment doesn't get stuck out there.

Mr. Pelkey said it took him a second to locate the 2.18 feet on the end of the line to make the 250' of road frontage required and that he would have enjoyed the drawing better if it contained a road frontage line to follow.

Chairman Kestner closed the public portion of the hearing at 7:45 p.m.

**Motion:** (Henry, second King) to approve the Subdivision Application;

**Discussion:** Mr. King said he did not have any conditions to add to approval and that the discussion about the utility easement was an opinion and advice about what the applicants could do. PSNH is going to have to fix it if people want their lights to come on so it usually gets worked out he said.

Mr. Kestner asked Mr. DeSantis if he thought it would be advantageous to have the engineer include egress to the utility pole on the plan.

Mr. DeSantis said he thought it would be advantageous to include it just to cover their behinds.

Mr. Henry said that is not the board's job.

Chairman Kestner said it is the board's job because it is something they are seeing.

Mr. Hayden asked that given the idea to add in the deed that they allow access to the line through the existing driveway if it would be sufficient to note on the plan stating that access to this particular line for this property is by the existing driveway.

Mr. Kestner said he would be agreeable to that.

**Amendment:** (by Mr. Henry) with the condition to add a note to the plan delineating the access point for the power is from Map R24, Lot 9's driveway to Map R24, Lot 9-1's utility easement area.

**Vote:** The motion passed 6-0.

#### **Continued Public Hearing - Site Plan Review for Joseph and Janet Gray (36 Brown Road):**

Chairman Kestner invited the abutters to continue with any questions/comments on the plan.

Wayne Baribeault said the plan as presented this time is much different than was presented last time and why they had so many questions the first time. He said it is clear it is not commercial and there won't be a lot of traffic going up and down the road. He asked what would happen if the board accepts the plan and the traffic increases like the applicants said it wouldn't.

Mr. Kestner said they would need to bring it to the Code Enforcement Officer's attention that the farm's traffic is becoming a nuisance. The CEO may need to consult with Mr. DeSantis as to the potential of a non-compliance issue he said.

Mr. King said the applicant has an approved use and he hasn't implied how much impact he is going to have on the road. If it is not reasonable to the road the board could hold a compliance hearing. They have an approval and they just can't all of a sudden go do whatever they want. The Town's enforcement action could lead to court action if the Town can't get voluntary

compliance which the Town has done when people don't comply with their approval he said.

Mr. DeSantis said the matter is complicated by the fact that it is a private road.

Mr. King said the applicant has to live up to the approval whether it is on a private road or not.

Mr. Kestner asked Mr. Baribeault which parcel his property is noted as in the subdivision plan.

Mr. Baribeault said his parcel is on the end of the right-of-way and abuts the Gray's property (2e). He said that he didn't have any disagreement with the rest of the proposal.

Mr. Kestner said that part of the paperwork from the attorney is that the easement was granted in 1923 when both parcels were recorded as farms on the registry for the Town. An organic farm versus what was a dairy farm is still the same and is still being used for an agricultural use he said.

Mr. Baribeault said before he purchased his property the owner at that time of the "farm down front" had a survey done because she wanted to confirm her property lines. He said her property line goes from the upper part of the easement to his stone wall. He said that is why he questioned who owned the easement and according to the attorney the Gray's own it.

Mr. Kestner said he couldn't speak about the title or the survey for the farm down front as there were no meets and bounds in the 1923 or 1945 documents presented to the board. He said the delineations of the properties were described by "go left at the fence" at that time.

Mr. King said it appears to him that the land that the easement runs across is owned by the property down front but the easement is granted to the Gray's to pass through to their property. Once the rights are given to that parcel they can't be extinguished he said.

Richard Folger said he owns 2 properties (#35 and #25) on Brown Road and is one of the owners of the right-of-way. He said the 50' foot right-of-way is only for the 5 lots created by the subdivision. He said the Gray's do not have a 50' right-of-way but have an easement from the right-of-way to their property.

He said his concern is that everything that goes on at the Gray's goes by his property on the 50' right-of-way which the owners of the right-of-way have to maintain for the purpose of the Gray's. He said at some point the farm is going to grow and the traffic is going to grow affecting his privacy and that the owners of right-of-way will have to maintain it for them.

Mr. Kestner said that issue unfortunately is tied up in the maintenance agreement that was signed in 2015 and it is not up to the board to provide any additional compensation or conditions for that agreement. He said the agreement seems to include a means of arbitration to resolve road maintenance issues for dissenting property owners.

Mr. King said if the use becomes inconsistent with what the application was approved for they have to get in compliance with the approval or amend the approval. He said that hopefully the Gray's can pick up their share of the road maintenance based on their use but based on what is shown their rights of access to use Brown Road and the easement is pretty clear he said.

Sheridan Folger (35 Brown Road) said his biggest concern was the word "commercial" and the traffic discussed at the first meeting. He said that his other concerns were more to do with

what is seen in the photo displayed, which is about 7 years old and that all of the open area shown has re-vegetated. He said the previous owner destroyed the land and cited concerns about skidder tracks that drastically altered the watershed and habitats, the potential massive excavation process to recover the land and plant anything, changing the water flow and surface drainage, the impact on the 4 intermittent and 2 regular streams that feed directly into the Cocheco River across Chestnut Hill Road, flood prevention, fragmentation of bird and animal habitats, sediment, pollution and erosion controls, the heavy equipment coming in and out of the site and the lack of an agricultural plan to harvest crops.

Mr. Folger said the board has a site plan that is 3 sentences long with no plan but pictures and drawings of their end goal. He applauded the fact that the Gray's want to farm the land and wished them the best of luck but that these things should be looked at and addressed with actual planning and be presented.

Mr. Henry said with regards to the equipment mentioned, the immediate and on-going agricultural operations sound like they will be limited to the greenhouse. The rest of the property is designated as a tree farm which he did not think is a high maintenance use.

Mr. Folger said in order to become a tree farm it will require huge maintenance.

Mr. Henry said there were trees there at one time and that's why it was logged.

Mr. King said there are quite a few tree farms in town and none of them are required to do the type of review Mr. Folger is looking for. Tree farm requirements are set by the state and Town has no requirements for tree farms he said.

Mr. Folger said there are different requirements for the Town and the state for forested land, agricultural lands and accessory agricultural land. He said the Town of Farmington Earth Removal Regulations, Section 9, #7 may deal with the type of earth removal needed to convert that property to the type of tree farm on the application.

Mr. King said Mr. Folger also mentioned the potential need for an Alteration of Terrain permit which is required when more than 1 acre of terrain is altered which is a state requirement. He said based on what is stated on the application he did not see any need for an AOT permit now.

Mr. DeSantis said Mr. Folger brought up some excellent points especially about habitat. He said the Town regulations don't apply but that they become state issues and suggested the applicants contact the state and ask for best management practices for the plan.

Mr. Kestner said he was not aware of the board being able to put any major restrictions on this application based upon an agricultural use in a rural residential area. Based the information presented by the applicant, his engineering firm and his attorney I'm not seeing anything that is delineating that he can't run that facility out there.

Mr. King said the previous owner stripped the land but it has started to re-grow into its natural state. He said he is reasonably confident that the Gray's are going to be good stewards of the land and that the conditions are going to continue to improve as far as drainage as the growth on the land soaks up a lot of the water and keeps it from being excessive to the down slope.

Mr. Pelkey said he appreciated the amount of time and thought Mr. Folger put into his concerns about what is going to happen to the land next to him. He said the history of that land shows that at one time it was agricultural and none of the forestation, flora or animals were there and that it is interesting how that one small area is evolving over 100 years time. He suggested if Mr. Folger has some concerns about some of the specific animals and habitat in the area that getting the state involved would be an excellent way to go if he feels that something really needs to be protected.

Mr. King added that the UNH Cooperative Extension is also a good resource.

Chairman Kestner closed the public comment portion of the hearing at 8:15 p.m.

**Motion:** (Henry, second Laferte) to approve the application;

**Discussion:** Mr. King said the impact stated by the Gray's as far as traffic is part of the record and if it is in excess of that to any extent they need to come back and revisit their application because that is what they're asking approval of and any substantial changes needs to be approved by this board.

Mr. Kestner asked if he wanted to put a number to the traffic amount.

Mr. King said he did not and that if it becomes an issue of reasonableness he was sure it would be brought to the board's attention by the abutters. It would then be up to the board to determine if it was reasonable according to what they were approved for he said.

**Vote:** The motion passed 6-0.

**Additional Correspondence:**

Chairman Kestner said there were not enough copies of the letters for the board to review.

Mr. DeSantis suggested the correspondence be included in their packets and that they review it at the next board meeting.

Mr. Kestner said the correspondence has to do with compliance issues involving some previous applications – Aroma Joe's, Farmer's Kitchen, the Lone Star escrow fund and the Farmington Country Club.

**Adjournment:**

**Motion:** (Laferte, second Place) to adjourn the meeting passed unanimously at 8:20 p.m.

Respectively submitted

Kathleen Magoon

Recording Secretary



David Kestner, Chairman