

Town of Farmington  
Planning Board Meeting Minutes  
Tuesday, January 15, 2019

**Board Members Present:**

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

**Others Present:**

Diana Proulx, Planning Dept. Secretary  
Randy Tetreault, Norway Plains  
Stuart Arnett, ADG Group  
Billie Laferte, George Mucher, Peter  
Mucher

**BUSINESS BEFORE THE BOARD:**

**Call to Order:**

Chairman Kestner called the meeting to order at 6:06 p.m.

**Pledge of Allegiance:**

All present stood for the Pledge of Allegiance.

**Welcome New Member:**

Chairman Kestner welcomed new alternate member Bruce Bridges to the board.

**Review of Minutes:**

Nov. 27, 2018- Page 6, 6<sup>th</sup> line from the bottom – add “the” before “board”; Page 7, 12<sup>th</sup> line from the bottom- add “of” before “notes”.

**Motion:** (Fisher, second Laferte) to accept the minutes as amended passed 7-0.

Dec. 18, 2018- Page 10, 9<sup>th</sup> line from the top- add “it” before “fits”; Page 12, 19<sup>th</sup> line from the top- add “a” before “note”.

**Motion:** (Laferte, second King) to accept the minutes as corrected passed 7-0.

Chairman Kestner noted that Town Planner Dan DeSantis was not present at the meeting and welcomed Planning/Codes Secretary Diana Proulx who attended the meeting in his place.

**Fire Chief's Memo- Richard's Way:**

The board received copies of a 1/7/19 e-mail and a 1/26/17 memo from Fire Chief James Reinert expressing his concerns about the conditions on Richard's Way including a lack of street signs, the lack of plowing and maintenance of the road hampering access by emergency

vehicles and the unknown operational status of the cistern.

Mr. Fisher said that this is a Code Enforcement issue not a Planning Board issue.

Chairman Kestner agreed and said there has to be sign-offs for the Certificate of Occupancy issued for the one house that was built there and for the final approval for Richard's Way conducted by FST on behalf of the Town. He suggested that Chief Reinert bring his issues to the Code Enforcement Officer (CEO) to forward the letter to the developer.

Mr. King said the letter just addresses the access to the road.

Mr. Henry pointed out the letter was from 2 years ago.

Mrs. Proulx suggested the Chief missed the incorrect date and that he may have used a form letter as this is a current letter sent by the Chief. She said the Town Administrator asked the Chief to elaborate on what his concerns were and that he sent the e-mail in response.

She added that there was also some concern that there may be no recourse for these issues due to the release of the funds (that were escrowed). The Town Administrator requested the board be given copies of the Chief's comments for review she said.

Mr. Pelkey said that over the past several months the board has received memos from different Town depts. asking them to correct problems and to his knowledge they do not have the warrant to do that. There are Town depts. that are responsible to enforce the board's decisions and the Planning Board doesn't have the funding or the personnel to enforce issues he said.

Mr. King said there have been times in past when the board has had to get involved in compliance issues. He said to his knowledge the applicant met all of the conditions of approval and compliance after their approval and that the board asked if any issues weren't addressed when the escrowed funds were released. If they are no longer in compliance the CEO can take that up directly because what was approved and the conditions of the approval should be clear enough that someone could read them and say if they were non-compliant he said.

Mr. Pelkey said the only question to the board would be an interpretation of what they already approved.

Mr. King said the board could consider if there are any gray areas but if it has been approved and there are conditions of approval where they have to maintain access for safety the CEO or the Fire Chief should notify the developer/responsible person, cite the deficiencies and have them correct them or have them tell us how they are not responsible. If it is not clear, there have been times when we have to pull the applicant back in, go through all of the details and say you're not in compliance.

Mr. Pelkey said there was no question about whether or not the decision was clear. They are simply saying they are not in compliance he said.

Mr. King said that issue would usually come up when the developer says no one told him he needed to do something and it is not clear in the conditions of approval.

Mr. Pelkey said the Chief cites the Fire Code regulations about the requirements for the cistern.

Mr. King said those regulations were in force when this applicant came before the board so

those regulations are part of the conditions they had to meet. Those standards haven't changed and the applicant was put on notice that it was part of the approval they have to follow he said. Mr. Pelkey said when someone is not in compliance with the Fire Code they don't bring that to the Planning Board.

Mr. Laferte asked if the Planning Board was going to go out and "beat up" on these people because it is not being done right. We are not supposed to go out in the field. There are people who take care of that he said.

Mr. King said someone will need to review the plan and see what signage requirement was approved. If it was required and it is not in place, that is a compliance issue which can be handled by the staff. If it wasn't a requirement and it should have been a requirement that the board didn't hold them to, the staff would need to have a discussion with the applicant about the requirement and what could be done.

He said it may take a few hours for the staff to sift through the approval but it would take longer to schedule a public hearing, notice everyone and bring them back before the board. All we could say is they are not in compliance and then sic the Chief on them and he already has the authority to make conform to the requirements he said.

Chairman Kestner asked if there also should have been an approval from the Fire Chief for the installation and the operational functionality of the cistern put there as part of the sign-off for the subdivision.

Mr. King said the Fire Regulations contain installation/approval requirements that should have been adhered to. He said he would have to go through the plan to see if they were signed off.

Mr. Bridges said when the applicants came before the board they specifically said they did not intend to maintain the end of the road and no one said anything to them then. They said they weren't going to plow the road to protect the asphalt he said.

Mr. King said that may have been a short term plan and not for after the road was completed.

Mr. Bridges recalled that at the last meeting the applicants attended they said that the road is complete and they specifically said they planned to leave the road covered with snow to protect the asphalt as it wasn't being used because there is only one house there.

Mr. Henry asked if the asphalt was just completed as that is what got the funds released. He said he could understand not plowing the base layer but that they had finished paving it within the last 6 months and that is what got their funds released.

He then asked if a motion was needed to kick this issue back to Code Enforcement.

Chairman Kestner said he did not think a motion was necessary as the board is not approving anything and that going by the consensus of the discussion the board wished to send this issue back to Code Enforcement.

#### **NH Dept. of Transportation (DOT)- Resurfacing Project for NH Route 11:**

Chairman Kestner said the board received notice of the resurfacing project for Route 11 and he was not sure why they received the informational notice.

Mr. Fisher said the Selectmen and Conservation Commission also received this notice and that it is just for informational purposes.

Mr. King said the letter is asking that if they have any concerns with the proposed project to contact the DOT's Bureau of Environment.

There were no questions or comments regarding the project from the board.

**PUBLIC HEARING –Proposed Zoning Changes:**

Chairman Kestner opened the Public Hearing at 6:30 p.m. He asked if the members were comfortable with the proposed changes as presented.

Mr. King suggested the proposed changes be read into the record so that the public can hear what the changes are as the people at home may not have seen the posting for the hearing. Consensus of the board was to review and take questions/comments regarding all of the proposed amendments together at the same time.

Chairman Kestner then read the proposed zoning changes into the record (see attached).

**Table of Permitted Uses in VC** - Chairman Kestner said that under Section 2.0 there was also a proposed change to the Table of Permitted Uses for the Village Center District Section 2.05. He then read the proposal into the record (see attached).

Chairman Kestner opened the public comment portion of the hearing at 6:35 p.m.

Mr. King said the changes to the Table of Permitted Uses are less restrictive than what we currently have whether it's from schools/colleges to recreational uses. He said there is a clarification under Residential Use where multifamily dwellings above the ground floor in mixed-use developments which is now is permitted with review (PR) would be changed to "Residential units only above the ground floor of mixed-use structures" would be permitted (P). This could be considered as more restrictive as it would not allow any residential dwellings in the VC on the first floor that don't already exist he said.

Mr. Henry said he did not see this change as a clarification but as a taking of property rights. He said from their previous conversations the intention of this is to use the power of government to take property rights and prevent property owners from renting out their property in the way that the market is willing to pay for it. A building owner could take a building with commercial fronts and make it a completely residential building and comply with this law which may be the unintended consequence here he said.

He said there are some buildings downtown that are deep enough for a commercial unit in the front of the building and ample space in the back for an apartment and still preserve the commercial look of Main Street if that is the intention here while still allowing residential use for units where there is no buyer for the commercial units on the first floor.

Mr. King said when the Town adopted zoning in 1979 it gave the Town the ability to structure the town to what was permissible and what is not. He said using Mr. Henry's argument he could turn his building in an industrial park that he doesn't have a tenant for into an apartment house. He said Mr. Henry's argument about the use of the back of deep buildings for residential

use is a reasonable but did not agree that the proposed zoning is a taking of property rights. Mr. Pelkey said that part of what they are doing is to maintain a vision for the downtown and part of that is to make sure the infrastructure stays in place to do that. That is what the town will ask of the property owners and the property owners can ask the town to maintain it as a business area, to provide lighting, parking, sidewalks and all of the things that businesses need to run in town. It is a good referendum for the public and the public has to decide what they want too. In my opinion I think they want to see a business section and for that section to still be there when business is ready to come into Farmington he said.

Mr. King said in any case where it doesn't fit a land owner has the ability to prove that they have a hardship and seek relief through a Special Exception or a Variance depending on the zoning to get that use permitted.

Mr. Henry said when the board first started talking about this they defined storefronts and had the idea that they would prevent converting the storefronts. The residential above the ground floor only applies to mixed use buildings so I can get rid of the commercial units, go completely residential and have an apartment complex in the Village Center District. I don't think that is what you're after he said.

Mr. Pelkey said there is absolutely going to be multiple story apartment buildings in the Village Center as the VC comprises more than just Main Street. There are buildings off of Main Street that are not storefronts that are being used as multi-floor apartment buildings and are not mixed use he said.

Mr. King said those uses would fall under being "grandfathered".

Mr. Pelkey said he did not think there was any desire to restrict that off of the main business section downtown.

Chairman Kestner said this is the first step toward Form Based Zoning that Town Planner Dan DeSantis brought to the board. He asked Stuart Arnett of ADG Group to discuss the underlying issues of Mr. Henry's concerns.

Mr. Arnett said the proposed amendment for the frontage definition is included because so many properties in town have 2 street frontages and Town Counsel was concerned that they should make sure they are only saying this for the frontage that is the commercially fronting piece. My understanding is the language is more in sync with the zoning and why it was drafted that way he said.

He said if the residential market is that much stronger than the commercial market someone could change a whole building over. In a vibrant downtown the commercial first floor is worth much more than if it is residential. What it does is to make it harder without a Variance for landlords on both sides of a building to find out someone in the middle of the building is renting the first floor to something that is visually unattractive and residential traffic is very different with lawn chairs and cars parked there. If you have a legitimate hardship you can apply to get a variance he said.



Mr. Henry said no variance is required to convert a building that's currently commercial to completely residential if this passes.

Mr. Arnett said if it is a permitted use.

Mr. Henry said it is a permitted use now. The previous conversations were to restrict permitting storefronts to become residential but this doesn't do that. In fact, it just makes it so you would have to convert all of your storefronts to residential instead of one he said.

Mr. Arnett said the concern was if we said there is no way you can do it then that is a much more serious constraint of property rights. You can do it if you don't want it to be mixed use commercial. We wanted to make it more flexible and to encourage the commercial development of street front first floor properties he said.

Mr. King said that the wording is exactly the same as the current zoning so the change is to go from permitted with review (PR) requiring Planning Board/Planning Dept. review to Residential Uses only above the ground floor of mixed use structures is permitted (P) without review of the board. What they can and can't do isn't changing but level of review that they have to go through he said.

Mr. King said the zoning says multi-family dwellings above the ground floor of mixed use developments so if the building is already full residential that is not a mixed use and this would not apply. This only applies to those buildings that are already mixed use and this would make it less restrictive he said.

Mr. Arnett said it is for future uses as existing uses are existing uses.

Mr. King said this wording in the Table of Permitted Uses is not typically there. He suggested the wording may need to be changed or to add another section to accomplish this goal.

Mr. Arnett said the intent was not to say that a mixed use building can only have commercial use on the first floor as it would be great to have some offices on the second floor. He said he would be happy to bring this issue back up for consideration.

Mrs. Proulx said she was told by the Planner to add the new verbiage to clarify that the verbiage would be changed to that wording. She explained that the verbiage on the left side of the handout shows the existing wording and the verbiage on right side of the Table shows the proposed wording which would replace the existing wording.

Mr. Pelkey said the verbiage may be tying them to residential uses only above the ground floor and they may want more commercial uses above the first floor.

Mr. Henry said offices are allowed above the first floor now and there isn't a lot of option for it but we do want to allow for it.

Mr. Arnett said that is not the intent that he is aware of.

Mr. Henry said this proposal has more zoning language than Table of Permitted Uses language and asked if it should be included in a separate written section of the Zoning Ordinance.

Chairman Kestner suggested it be included in the definitions section of the zoning.

Mr. King said they have now opened this to a Public Hearing and that a second Public Hearing is

planned.

Chairman Kestner corrected that this is the second Public Hearing on the proposed zoning changes.

Mr. Pelkey said there are other permitted uses in the same area that might want to go in on the second floor as opposed to the ground floor that are currently permitted so this proposed change contradicts with that. He gave the example of someone wanting to put in a barber shop on the 2<sup>nd</sup> floor which conflicts with the proposed residential units **only** above the ground floor. Mr. Fisher said when he read the proposed language he questioned if they were trying to restrict the second floors and above from having any commercial businesses. He suggested the word "only" be removed and to state that residential units above the ground floor of a mixed use structure is permitted (P).

**Motion:** (Fisher, second King) to remove the word "only" to read "Residential units above the ground floor of mixed-use structures is permitted;

**Discussion:** Mr. Henry said that does nothing to restrict converting storefronts to residential uses. He asked if the word only is stricken is the proposed change is needed at all.

Mr. Pelkey agreed that it doesn't change that.

Mr. King said then the only change would be changing the phrase "Multifamily dwellings" to "Residential units".

Mr. Arnett said he thought the intent is to permit residential structures above the first floor.

Mr. Fisher said there was nothing to restrict them before.

**Amendment:** (by Mr. Fisher) to leave multifamily dwellings above the ground floor of mixed use developments alone, change the Village Center notation from Permitted with Review (PR) to Permitted (P) and do away with "Residential units only above the ground floor of mixed use structures";

Seconded by Mr. Henry.

Mr. King withdrew his second to the original motion.

**Discussion:** Mr. Arnett asked if they are changing multifamily dwellings into residential units and that it would be a permitted (P) use.

Mr. Fisher said he didn't see the need to change multifamily dwellings to residential units. Just change the PR to P he said.

Mr. Henry said he favored the terms residential units over multifamily as there may be a building that only supports one apartment on the second floor.

Mr. Arnett said there was a previous issue where the definition of multifamily was contested.

Mr. King said the mixed use structures is a better fit than mixed use developments because that implies more than one building.

Mr. Fisher withdrew his original motion and the amended motion and then made the following motion:

**Motion:** (Fisher, second Henry ) to do away with "multifamily dwellings above the ground floor

of mixed use developments” and replace it with “residential units above the ground floor of mixed use structures” and in the VC column change “PR” to “P” passed unanimously.

Chairman Kestner said there are other proposed changes to the Table of Permitted Uses.

**Motion:** (Henry, Pelkey) to accept all of the other recommendations as proposed;

**Discussion:** Chairman Kestner asked if the board was sure they wanted to accept taking schools/colleges and Institutional uses not specified from Special Exception (SE) to Permitted with Review (PR).

Mr. King said institutional uses not specified means anything not listed in the Table.

Chairman Kestner said there are other towns and cities that are having real issues with where addiction treatment centers are ending up. Permitted with Review means we review it and they just have to address whatever concerns we have. A Special Exception requires a far higher standard to adhere to. So think about that he said.

Mr. Henry asked about the difference between a Special Exception and a Variance.

Chairman Kestner said the applicant would have to go before the Zoning Board of Adjustment for approval of either request.

Mr. King said they have different criteria and the biggest difference with a Variance is the applicant has to prove there is a hardship involved (in using the property in conformance with the zoning regulations). There is no hardship for a Special Exception and the applicant has to follow the criteria that were set by the state he said.

Mr. Arnett said with the Special Exception the applicant is asking for an exception to the rule and states why and with a Variance there must be a specific hardship so it is harder to get.

**Amendment:** (by Mr. Henry) to accept all of the recommendations as proposed with the exception of the uses that are not specified and to leave them as Special Exceptions (SE);

**Discussion:** Mr. Henry said that the Institutional uses not specified is currently allowed by Special Exception and that Recreational uses not specified are not currently allowed in the VC. He said his motion proposes to keep non-specified institutional use as allowed by SE and to change the non-specified Recreational uses from prohibited to be allowed by SE.

Mr. Pelkey seconded the amended motion.

Chairman Kestner then asked the board for their thoughts on the proposed changes in commercial and industrial uses section of the Table.

Mr. Henry noted that the retail sale of gasoline would change from PR to the more restrictive SE under this proposal.

Mr. Pelkey said any one of these types of businesses coming into town would have to come before the Planning Board if they were changing the use of a building.

Chairman Kestner said that may not be the case if it is a permitted use and the applicant would only have to go through the Technical Review Committee.

Mr. Pelkey said a major change to the use of any building would come before the board.

Mr. Henry said that because he motion was all inclusive he wished to withdraw his motion as it



had come to his attention that he did not have all of the pages in the handout for the proposed changes to the Table of Permitted Uses.

Chairman Kestner asked if there were any audience members who wished to speak for or against the proposed amendments/changes.

**Amendment-** (by Mr. Henry) to put Telecommunication Towers under SE;

Mr. Henry reviewed another copy of the handout and said he saw that Telecommunication Towers have been taken out of the zone and would go from PR to being prohibited. He said he would to put them under SE and to add that to his motion as well.

Mr. King asked if he was amending the motion he withdrew.

Mr. Henry said he was asked not to withdraw his motion and to take a minute to review a complete copy of the proposed changes to the Table.

Chairman Kestner said he stated that Mr. Henry's motion was withdrawn for the record and asked him to restate his motion.

Mr. Henry said he wished to have the towers allowed by SE, not knowing what technology will bring and that some of the towers are pretty well hidden and you would not even know they are there. He said he would hate to prevent someone from bringing hidden towers to the area that would provide better service.

Mr. Kestner said there is an entire 5G network that is being built right now where the antennas are going on utility poles and backs of buildings and are about 5 ft. tall but only have a 500-1,000 sq. ft. radius. They are very sensitive to elevation issues caused by buildings but that is what is coming for the next generation of towers he said.

Mr. Arnett said the intent here was that a tower should be a tower and not an antenna. He said you don't want to encourage someone to put a big radio tower there he said.

Mr. Henry said that every time a communications company wants to provide service to an area people come out of the woodwork to oppose it so he could see them using this to say it's not allowed. He then asked Mr. Arnett to define a tower.

Mr. Arnett said the other issue regarding the Chairman's point about the 5G antennas is they are moving to many small antennas versus one or two big towers and you don't want everyone coming in to put up 20 antennas downtown and go through the whole SE business. He said the definition should be adjusted in anticipation of the 5G antennas.

Mr. Kestner said there is a difference between telecommunication antennas and towers so he was not sure how the definition should be adjusted. He said there are also federal guidelines that supersede local regulations.

Mr. Arnett said that this recommendation was meant to say we don't want a big tower with a blinking red light in your Village Center.

Mr. Bridges asked if people realized that without those blinking red lights none of us would have cell phones and that they have to go somewhere.

Mr. Henry said this only applies to the Village Center.

Mr. Arnett said this issue could also be discussed during the revision of the Master Plan.

**Motion:** (King, second Henry) to make the following changes to the proposed Table of Permitted Uses: Page 35-under Institutional uses not specified to leave it the same, Recreational uses not specified to be changed to a Special Exception and not as Permitted with Review; Page 37-change Laboratories to a Special Exception; Page 38-Research and Development facility change to a Special Exception and not as Permitted with Review and to accept all of the other recommendations as presented;

**Discussion:** Mr. Henry asked why they would not want to permit labs and research facilities. Mr. King asked what if it was something such as a nuclear research facility.

Mr. Pelkey said he thought the board would want to set some safeguards for the public in that instance.

Mr. King said that with a Special Exception requirement they would have the ability to do that.

Mr. Pelkey said if someone is going to be setting up a lab that he would like to know what they will be working on and if there are any special requirements for the facility.

Mr. King said if they follow all of the zoning and downtown ordinances you can't deny them. He said it was similar to the uses not specified in that you don't know what they are planning to do until it is before the board.

**Vote:** The motion passed unanimously.

Chairman Kestner then read a proposed addition to Section 1.14 Definitions as follows:

**Mixed-Use.** A structure or development that blends residential, commercial, cultural, institutional or entertainment uses and where those uses are physically and functionally integrated

Mr. Arnett said the a multiple use would be a building that has 3-4 types of uses but they don't have any connection other than being in the same building. A mixed use is physically and functionally integrated so there is some connection between the two he said.

Mr. Henry asked why this definition is needed.

Mr. Arnett said that a multiple use requirement often has things like demising walls, separate entrances and separate metering. A mixed use might be where someone in the building is doing 2 or 3 things but they are integrated and it recognizes that the demarcations are not always absolute with firewalls and separate entrances, etc. that might be in a multiple tenant building. A good example of this is breweries that serve food he said.

Chairman Kestner asked if there were any comments/questions from the public about the proposed additional definition.

There were no questions/comments from the public present.

**Motion:** (King, second Henry) to add the mixed-use definition to Section 1.14 Definitions passed unanimously.

Chairman Kestner closed the Public Hearing at 7:28 p.m.

**Motion:** (Kestner, second Henry) to have an additional Public Hearing on February 5, 2019

passed unanimously.

**Motion:** (Kestner, second Pelkey) for a 5 minute recess passed unanimously at 7:30 p.m. The meeting reconvened at 7:40 p.m.

**NEW CASES:**

**CONCEPTUAL REVIEW:**

Conceptual Subdivision by: George J. and Dorothy Mucher (Norway Plains Associates, Inc. R. Tetreault, Agent) to subdivide existing 43.55 acres located on Elm Street; Map R34, Lot 20 into two (2) lots. Proposed Lot R34, Lot 20-2 to consist of 5.20 acres; Map R34, Lot 20 to be 38.35 acres.

Randy Tetreault said that he was representing the George and Dorothy Mucher Trust which owns a 43 acre parcel off of Elm Street/Route 75. He introduced George Mucher, Jr. who abuts the parcel owned by the trust and his son Peter who is looking to subdivide off a lot to build on. He said the parcel has a fair amount of wetlands on it and good area of uplands on it as well. A boundary survey was done of the property in 1986 and a subdivision that cut off the 5 acre lot that George owns to the left of the Trust lot. It was a 48 acre parcel and that subdivision left 43 acres he said.

Mr. Tetreault said the reason for attending the meeting was to discuss a non-binding conceptual proposal to subdivide a 5 acre lot from the Trust property adjacent to George's lot. He showed the board an overview of the property and pointed out the wetlands on the remaining frontage and said they are proposing to provide a 50 foot right-of-way to the back of the lot where there are additional uplands. They will need a small culvert wetland crossing to get there and they don't plan to do that now but it sets it up planning-wise for a future subdivision he said.

Mr. Tetreault said he also wanted to talk about the regulation that used to call for contiguous uplands and now calls for buildable area. He in this case there are class 3 wetlands and they have the buildable area needed to qualify for the 30,000 sq. ft. required in 2 different areas on this lot. It will be up to whoever builds on it to pick either the front area which is a little smaller but better shaped or the rear area on the 5 acre lot he said.

He said to reach the second buildable area they will need to apply for a minimum expedited wetlands culvert crossing and build a common driveway back further and it depends upon if the family wants to spend the money to do that. They also plan to apply for a state entrance permit for the common driveway and the r-o-w he said.

Mr. Tetreault said the state requires 20,000 sq. ft. of contiguous uplands to install a septic system on a lot. Years ago the Town of Farmington decided to double that and go to 40,000 sq. ft. and put it in the zoning so that every lot in Farmington that requires a septic system will have to have 40,000 sq. ft. Since then it has been reduced in different zones to 30,000 sq. ft. but may still be 40,000 sq. ft. in the agricultural zone. It got switched around at one point to not say

contiguous upland which would go all the way to your boundary line to the edge of wetlands. Now everyone wants to see a building envelope so they can say if you have 20,000 sq. ft. you have enough room for a house, septic system and a well and we can see it on the map he said. He showed the board a drawing of the proposed building envelop for this lot and noted that they don't have to keep 50 feet away from the class 3 wetlands but they could if necessary. Mr. Tetreault said when you say buildable envelope the question is buildable for what. The septic system, structures and the well all have different setbacks and it is not all inclusive. Buildable is defined in your subdivision regulations as everything outside of the setbacks. That shrinks down your area of contiguous upland quite drastically he said.

He said in the Suburban Residential zone if you do a perfectly square or perfectly rectangular lot with just the building setbacks it doesn't leave you much. If you have an irregular shape lot or any wetlands or steep slopes in the 1 acre zone your regulations call for 30,000 sq. ft. which doesn't give you much leeway. The reason I bring it up is this may be something the board may want to consider looking into for the future with most of the town in a one acre zone he said.

Mr. King disagreed and said that most of the town is in a 3 acre zone.

Mr. Tetreault said it may be 3 acres area-wise but is not 3 acres development-wise. I don't see where asking for 40,000 sq. ft. on a 3 acre lot is overly restrictive but I do see where 30,000 sq. ft. required on a 43,000 sq. ft. lot could cause issues.

Mr. King asked if this is in subdivision regulations and if so they have the ability to waive them.

Mr. Tetreault said he believed the requirement is in the zoning ordinance.

Mr. King asked if he needed a Variance to the zoning ordinance or if the plan meets the sq. ft. requirements set by the zoning.

Mr. Tetreault said this plan does not need a Variance and it meets the zoning requirements with 39,000 sq. ft. in the first buildable area and 52,000 sq. ft. in the second buildable area. He said it would be better to have this requirement in the subdivision regulations where the board could look at each application individually and if there was a qualifying instance where the requirement was overly restrictive the board could waive it. But since it is in the Zoning Ordinance someone would have to go to the ZBA for a Variance which is not always an easy thing to prove he said.

Mr. Henry said the lots would be required to be generally rectangular so you can't necessarily subdivide around the contiguous land and would have to get a rectangle to fit around it.

Mr. Tetreault said that is not what happens in nature and sooner or later we get into more of the irregular lots instead of the nice rectangular ones.

Mr. King noted the wetlands to the right of the proposed lot and asked why it wasn't included with the proposed subdivided lot instead of leaving "hanging out in space".

Mr. Tetreault said it was not included with the proposed subdivided lot because they need the road frontage for the parent lot. The common driveway is not a roadway and doesn't meet subdivision regulations so it can't provide street frontage. It is a good place to leave a strip of

land for access to the other upland area and it also separates between an existing house and the proposed house he said.

Mr. King said he was on the board when this change passed 4-5 years ago and that he disagreed with Mr. Tetreault's comments on the issue. When you look at the lots that have come before us the quality of developable lots we have been getting that have to conform to this are reasonable. Before that we got some pretty poor looking stuff he said.

Mr. Tetreault asked if Mr. King thought the buildable area of a lot in that zone should be three-quarters of the lot.

Mr. King said the lot size can vary based upon accomplishing that goal. You don't have to take a 6 acre parcel and divide it into 6 lots. To get that requirement you might only be able to get 4 high quality lots. If it's a 1 acre lot it is already subdivided he said.

Mr. Tetreault said this is fine for lots on town water and sewer but lots serviced by septic have their own requirements through the state to make them bigger anyway. That doesn't sound like what you guys wanted. You wanted that area in there, the  $\frac{3}{4}$  of the required lot size in that zone and then go around that no matter how big it's got to be he said.

Mr. King said they put that in place to have higher quality lots based upon what they were seeing. He asked Mr. Tetreault if they could back in time how he would accomplish this so they would stop getting junk lots and get a higher quality lot based on the buyer being able to put structures on it and have it be usable instead of getting lots with fingers of contiguous uplands going nowhere but it conformed and the guy could put a house on it but be putting his lawn chair in a wetland.

Mr. Tetreault said even if he agreed with that scenario he still thought the requirement should be in the subdivision regulations.

Mr. King said when it is put in the subdivision regulations it makes it a bone of contention with every application. He said at this point his only issue with this proposal is the corner pinch point between the 5 acre lot and the parent lot.

Mr. Tetreault said the line causing the pinch point was actually a zone line to show that most of the parent lot is in the Suburban Residential zone and is not a boundary line.

He said he did not expect the state access permit to be an issue as the area is flat and there are no sight distance issues. He said there is an existing tote road where they accessed the back of the lot for logging.

He said he advised them to go with 5 acres so they would not have to go through the state subdivision approval but they will still have to do a test pit and design for state septic approval.

Mr. King asked why they thought there would be some bone of contention with what they are proposing leading them to come for a conceptual review with the board.

Mr. Tetreault said he wanted to make sure there wouldn't be a question about the configuration of the lot and what the future plans are for the access to the back of the lot. He said he wanted to ask them if there is anything they see that could be an issue so that they



could deal with it in the interim and have the plans submitted by the Feb. 15 deadline for the March board meeting.

Mr. King asked if the access to the 5 acre lot would be deeded over the 50' right-of-way.

Mr. Tetreault said the access to the lot would be deeded from the shared common driveway over the 50' r-o-w.

Chairman Kestner said the lot line for the 50' right-of-way appears to go right alongside of some buildings which will create issues with the setback.

Mr. Tetreault said the buildings are sheds and that they would note that the buildings would be relocated. He said he depicted 25' setbacks along the 50' right-of-way and questioned if the setback for the buildable area in the front of the subdivided lot could be considered a side setback or a front setback. I wanted to show you they have the room for a front setback and if someday the 50' r-o-w qualified as a road you would need a 25' setback there he said.

Mr. King said that they split the lot and provided the 50' r-o-w because there is no access to the parent parcel because of the wetlands.

Mr. Henry asked if they would allow the small buildings to remain within the setback if all parties agree. He recalled an instance where excavation was allowed within a setback after the abutters agreed to it.

Chairman Kestner said the issue here is they are creating an interior lot line that does not exist today. The potential exists that the line may go through the corner of the building. We are all not going to be here forever and the shed ends up becoming an encumbrance and not within the setback guidelines for a future owner.

Mr. King said by putting the r-o-w line there it made the buildings non-conforming.

Mr. Tetreault said that line was created in 1986 when George's parcel was subdivided from the parent lot.

Mr. King said then those buildings may be pre-existing non-conforming structures.

Mr. Tetreault said if he submits the application and related materials in time for the March board meeting they may not have the state permits by then but the conditions of approval could be contingent on receipt of those permits.

Mr. Kestner said he was fine with requiring the buildings to be moved at some future point. Some members said the buildings are pre-existing non-conforming so they have nothing to do with what is being proposed.

Mrs. Proulx added that the board did not receive a copy of the 1986 site plan in their packets.

Mr. Tetreault showed the 1986 plan to the board and pointed out that the line being discussed has always been there. He said it is up to the board and the Mucher family members as to how they want to handle the issue.

After some additional discussion about the buildable envelope and the sq. ft. requirements Mr. Tetreault thanked the board for their time and left the meeting.

**Any Other Business before the Board:**

**Bar Code Effect** - Mr. Pelkey said he researched the "bar code effect" as discussed at a previous meeting concerning the solar farm approved for the former Town landfill site and offered to discuss his findings with any interested members.

**Resignation** – Chairman Kestner said he was notified by Mr. Laferte that he was resigning from the board and read a letter given to him by Mr. Laferte.

The letter stated his resignation was effective at the end of this meeting as he is physically unable to continue as a Planning Board member or as a member of those boards/committees where he represents the Planning Board (EDC, CIP, SRPC). He thanked all of the members for their assistance during his years of service on the board and wrote that under their leadership the board will continue to have a positive impact on the town of Farmington.

Chairman Kestner thanked Mr. Laferte for his years of perseverance and contributions to all of the committees that he attended on their behalf.

Mr. King thanked Mr. Laferte for his service to the community and this board and wished him well health-wise and otherwise.

Chairman Kestner said Mr. Laferte is currently the Vice Chairman of the board and there is no procedure for loss of a board officer through resignation in the bylaws. He asked Mr. Place if the Selectmen had dealt with this issue and if he was aware of the procedure for replacement.

Mr. Place said he was not aware of the Selectmen having dealt with this issue.

Mr. King said as a former Selectman that when a board officer has resigned they appointed someone in their place and it is at the board's discretion to leave the seat vacant until after March Town Meeting or to appoint a replacement.

Mr. Henry said he would like to consider appointing someone now in the event Mr. Kestner is not able to attend the Feb. meeting.

Mr. Fisher said in the event that the Chair and the Vice Chair are unable to attend a meeting the board's Secretary would be the Chair. He said when the Conservation Commission's Secretary resigned they voted at that meeting to appoint a new Secretary.

**Motion:** (Henry, second Pelkey) to nominate Charlie King for Vice Chairman;

Mr. King accepted the nomination.

**Vote:** The motion passed unanimously.

**Adjournment:**

**Motion:** (Laferte, second Fisher) to adjourn the meeting passed unanimously at 8:25 p.m.

Respectively submitted

Kathleen Magoon, Recording Secretary



David Kestner, Chairman