

Town of Farmington
Planning Board Meeting Minutes
Tuesday, April 6, 2021

Board Members Present:

Charlie King, Chairman
Bill Fisher, Secretary
Gerry Vachon, Selectmen's Rep.
Jeremy Squires
Stephen Henry

Others Present:

Kyle Pimental, Dir. Planning and
Community Development
Adam Giles, MBG Enterprises

Board Members Absent:

Rick Pelkey, Vice Chairman, excused
Bruce Bridges, excused
Ann Titus

BUSINESS BEFORE THE BOARD:

Call to Order:

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

Pledge of Allegiance:

All present stood for the Pledge of Allegiance.

Review of Minutes:

March 2, 2021 – Public Meeting Minutes – No errors or omissions

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

March 16, 2021 – Public Meeting Minutes – No errors or omissions

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

Members Wanted:

Chairman King said there are openings for 1 regular member and for alternate members. He asked if the application to be appointed as a board member is on the Town website.

Mr. Pimental said he will check and if it's not there he will ask to have it posted.

Preliminary Design Consultation with Dennis Allfrey and Tri-Tech Engineering:

Mr. Pimental said he received an e-mail from a company rep. notifying him they weren't going to attend this meeting and asked to be rescheduled to the next board meeting. He said he told them that would be on April 20 but he will not be at that meeting and they have not replied as to whether they want him to be present for their discussion.

Mr. King said Mr. Pimental could provide the board with his thoughts on this matter prior to going on vacation if they choose to meet with the board on April 20.

Mr. Pimental said he has already met with Mr. Allfrey and reviewed his potential plan for a 7 lot

subdivision off of Foxtrot Drive. He said the site is a pretty wet area and they have laid it out with a proposed new road and the applicant wanted the board's initial thoughts before they go any further with the design.

Mr. King said he has some questions about whether some of things proposed are allowed by the Subdivision Regulations and if there will be any waivers needed.

Mr. Pimental said there may be some things needing to be addressed or a waiver such as the well head radiuses spilling over into another lot and the lot design requirements. He said he would provide the board with a memo on this proposal before the next meeting.

Preliminary Design Consultation with Adam Giles:

Mr. Giles said he was before the board to discuss amending his plans. He said the board approved his site plan, they built on the lot and when he tried to refinance they found a title issue because of the Town right-of-way there and they had to get a lawyer involved which pushed them out by 9 or 10 months. He said they came to terms with the Town and they agreed that the right-of-way is not going to be there.

He said during that time the company has grown and this layout does not work. He said they're trying to get a new loan approved and they only have a Conditional Occupancy permit not a final CO. He said there was some stuff he wasn't going to put in just to appease the final occupancy permit without doing it the right way with the way the land works for his business.

Mr. King said that originally they had an engineered plan by Tri-Tech.

Mr. Giles said that is correct. He said he now has a hand drawn plan that he tried to keep to scale and he is proposing to change the layout of the property regarding the fencing, extending the parking lot and the building structure for the future expansion of his business. He said he thought the fence was a Town regulation but now that he is more familiar with the rules he learned that it is not even in the Sarah Greenfield Business Park covenants and the only thing that needs to be fenced in is the dumpster.

Mr. King asked what is currently built there now.

Mr. Giles said the building is built and they have been in it since January.

He said there is a future 40' x 50' expansion space where his temporary storage area is currently located and he is using larger equipment and his trucks don't fit in the garage.

Mr. King said the 28' x 40' office space is constructed, the 22,000 sq. ft. warehouse is constructed and the future expansion is not constructed and he is looking to change his permit to the future construction.

Mr. Giles said that is correct and he figured that now is the time to lay all this out.

Mr. Squires asked if another 40' x 50' would be added to the building.

Mr. Giles said it would be 60'x 60' and it would still be within the building setbacks. He said with the current economy he didn't want to build this yet and wanted to get this done so that hopefully within the next 2 years he could just come in and pull a permit.

He said he didn't want to put \$30,000 into fence to get his final occupancy permit if he is going

to move it at some point and asked what he has to do to get the final occupancy permit.

Mr. King asked what the fence was constructed to now.

Mr. Giles said he currently doesn't have a fence. He said the plans call for a 6' high fence with 8' wide sections and he would like to change it to an 8' tall fence with 10' spans for more privacy.

Mr. King said he has to conform to his approved site plan or he has to get an amended plan.

He said that Mr. Giles had an approval and in that approval a conceptual future expansion was shown and asked if Mr. Giles would be able to come in and get a building permit if that was on the plan and approved that way or if he would have to come back for site plan review.

Mr. Pimental said if it was on the plan and Mr. Giles wanted to pull a permit and build it he didn't think he would have to come back before the board.

Mr. King said it was approved that way and that he assumed that Tri-Tech did the engineering based upon the wetlands and the water at the site.

Mr. Squires said it was approved for 40' x 50' expansion and now he wants to change the size. He asked if the only holding him back from the final occupancy permit is the fence.

Mr. Giles said the fence, the parking lot line striping and the dumpster pad is what is holding him up. He said a dumpster pad would be a dumb idea right now as he didn't want to pour a pad and have to try to build around it and he could pave it and set the dumpster there for now.

Mr. King said that is what his engineer brought to the board.

Mr. Giles said sometimes engineers over-engineer stuff so he is doing this himself and trying to get rid of some of the stuff that is over-engineered. He said he is willing to do the line striping and he can see why it needs to be there.

Mr. Pimental asked if the board would approve an amended site plan that has hand drawn plans and there are a number of things on the amended plan that the board should discuss like moving the fence to fit better to what he wants because he still wants a fence, enlarging the future building expansion, relocating the gravel yard, the snow storage and adding some lights. He said he wanted the board to think about the increase to the parking area. He said on sheet SP-4 of the plan it shows the location of proposed drainage and in talking with Mr. Giles it sounds like that doesn't work and that the drainage should be located on the west side. He said increasing the parking going toward the western portion of the lot the storm water drainage system may not be designed to handle the increase in impervious coverage.

Mr. King asked if parking area is paved in his revised plan.

Mr. Giles said yes and he took out the white lines because that is where his equipment goes. He said they paved it so it slopes toward the pond he drew in because of the lay of the land.

He said the gravel yard did not work in its existing location because of the way the trucks pull in and back up so he moved it behind the parking spots because that's where they load the trucks in the morning and it has been like that since he got his conditional occupancy permit.

Mr. King said he has a couple of big hurdles number one being the original approval had a drainage study based upon where he was putting the water, how they were treating it and the

amount of impervious surfaces and when you change that it needs to be recalculated. He said this is sitting on top of the Town's aquifer and another site in the park with a similar proposal to "do their own thing" was required to have an engineered site plan.

He said the impervious impact of the increased building footprint probably isn't the biggest thing but originally the parking areas were sloping to drainage shown on his plan and now he is saying he has it going the other way and he wants to move the detention pond.

Mr. Giles said he went back to the engineer to amend that portion of the plan and he tried to charge him \$7,000 to \$10,000 just for that change. He said he just had to pay \$18,000 in lawyer fees to fight the Town after the Planning Board approved the site plan and then tried to take his land away.

Mr. King clarified that that wasn't the Planning Board.

Mr. Giles said when he first came in for this application it was brought out that there was a right-of-way on the left side of the property and then the Town tried taking a 50' r-o-w on the other side of the property that the lawyer said Mr. King said he (Mr. Giles) knew about and he could easily give him the documents if he wanted it.

Mr. King invited him to feel free to do so and refresh his memory.

Mr. Fisher said this was not done by the Planning Board and he was tired of hearing that the Planning Board is not business friendly. He said this board didn't have any idea about a 2nd r-o-w and it was discovered in a title search or whatever by the Town not the Planning Board.

Mr. King said it is not their responsibility to verify the meets and bounds and the right-of-ways on the property. We make decisions based on what is presented to us and we are entrusted to make the decisions assuming that the information is provided he said.

Mr. Giles said he didn't want to get into it any further and to have pay \$7,000 - \$10,000 more to reroute this is too much for them right now. He said they are trying to battle through this during a pandemic and he is trying to keep his guys afloat and to pay \$7,000 to \$10,000 is a lot of money for a piece of paper. It's not like I'm pitching it toward something bad- it's a sandpit and gravel is gravel whether it's here or there and I don't get it he said.

Mr. Fisher asked if the new pit he is recommending will handle the runoff from all the new impervious material he wants to add to the site. He said he wants to double the building size, add new parking and new pads and the board approved his drainage plan based on the original plan and that some expert said these 2 ponds will handle the drainage he creates.

He said now Mr. Giles wants to make it bigger and move the retention pond to the other side of the property but will the question is if the new retention pond will handle the runoff and he and Mr. Giles are not qualified to make that statement. He said it is going to cost him some money to move the drainage system and there is nothing they can do about that and he will have to have proof the system can handle it because it is right on top of the aquifer and they have to make sure that what he is doing doesn't contaminate the aquifer.

Mr. Henry asked if the retention ponds that are shown on the plan have been built.

Mr. Giles said the smaller one of the 2 ponds has been built and the other one is there and it handles the water now.

Mr. Henry said if the engineer laid out the future expansion area that the drainage ponds that are specced out on here would handle that impervious surface. If he wants to build a larger building there he is replacing a paved impervious surface with a roof so the amount of impervious surface remains the same he said.

Mr. Pimental said it depends on which direction the expansion goes in and if it goes north it would encroach into the gravel area. He said the bigger deal is with the parking and the additional pavement that is coming west.

Mr. Henry said the larger parking lot would make a difference in the impervious surface and asked where they are increasing the paved parking area.

Mr. Giles pointed out the proposed fence line, gravel yard and expanded parking on the drawing to the board. He said he wants to expand it because he has bigger trucks and needs the room to bring the trucks in, swing them around and back them in and he plans to add a lift and doors to the side and front of the building.

Mr. King said the impervious surface of the future expansion would be 21,000 ft. or a less than ½ an acre and the amount on the approved site plan is 10,500 ft. so he is proposing to double it. Mr. Giles suggested leaving the gravel in.

Mr. King said that Mr. Giles would be doubling the impact of the impervious surface and putting it in a different location than the engineered plan had and all the drainage calculations that he paid the engineer to do are out the window based upon what he is proposing now. He said if they apply the consistency to his plan that they did to his neighbor down the street when he wanted to do it they said no and that he needed to have an engineered site plan.

He said there is a difference if he were to keep it as gravel vs. pavement but he has changed the direction of the flow and asked Mr. Pimental for his thoughts on this issue.

Mr. Pimental recommended a hybrid approach where he could show some things on a non-engineered plan-the fence, moving the gravel yard, the lighting and snow storage but the board should require him to ensure they have the correct calculations for whatever the increase in pavement is because the zoning says only 35% of the total lot size can be impervious but the board can also allow for it to go up to 60%.

Mr. King asked if he would be over the 35% with this improvement.

Mr. Pimental said he didn't know and that is something they would want to know with a precise number on the exact change of the impervious coverage. The board can allow it to go up to 60% but it specifically says engineered designs and drainage calculations are required he said.

Mr. King said he agreed about the stuff Mr. Giles should do such as the signage and the line striping but changing the fence is a non-issue, the dumpster requirement is based upon screening so it's not visible and he didn't care if he put it behind the building, screened it with a fence and whether it has a pad or not.

Mr. Giles said he went to a bigger 30 yard dumpster and that he wanted to put it behind the end of the fence so it's unseen. He asked if he proposed to just change the fence and do the line striping and get his occupancy permit without doing all of this other stuff.

Mr. King said the occupancy permit is tied to him meeting what he was approved for and whatever he changes and the board approves he has to build to get his final occupancy permit.

Mr. Giles asked about scratching moving the parking lot for now.

Mr. King said the drainage has to match his plan.

Mr. Squires said he has to put in the other retention pond and put the fence change on paper.

Mr. King said if his paving is put in and it's pitching to a different direction that what was approved on the site plan if the **Code Enforcement Officer** would sign off on it.

Mr. Giles said he would rip it all up and re-pitch if it would make him happy. He said was not here to battle over this and all he wanted was a cheap payment because he paid way over price on something he couldn't control. He said he had to fight something where in the end the Town gave up by the time he finally got a good lawyer to fight it because they (Planning Board) approved stuff that was in the r-o-w and then the Town tried to take it by eminent domain. I had to fight that for 10 months and then I have to come in here and not be happy he said.

Mr. King asked if the r-o-w was shown on the plans he presented to the board.

Mr. Giles said no.

Mr. King said the Planning Board had no knowledge of that r-o-w.

Mr. Giles said Mr. King's name was brought up saying that he told him and it was in the minutes that there was a r-o-w on the left side.

Mr. King said that his recollection could have been that the r-o-w was on the left hand side facing that lot.

Mr. Giles said he will just go to the original plan if he has to but he's not going to put up a \$30,000 fence up just to get one signature.

Mr. King said they are not telling him he has to build it to that plan and they are agreeing with Mr. Pimental that some of this stuff he can amend because he wants to change it and it's not going to impact the site but when it comes to the impervious surface and the drainage they require an outside professional to do that and if you've changed that it needs to be updated and he didn't know what that will cost.

Mr. Giles said he would put it back to the (approved) pitch and asked if he could put the fence there. I'll re-pitch the pond that way and I don't care about the future and I'll come back another time he said.

Mr. Henry said there would be no problem with changing the fence with hand drawn plans on an amended site plan. He said he would hate to see him spend money to put up a fence and then tear it down.

Mr. Giles said he was trying to make this a one-shot deal but if it's going to cost him \$7,000 he doesn't have the money for it so he'll scratch the expanded parking off and go back to the 40' x

50' building expansion and everything that was existing besides the fence.

Mr. Henry said there was a question about increasing the lot size but if it stays gravel he would be comfortable with hand drawn plans. He said another issue with the neighboring lot was he had a paving company and there was concern about the equipment and materials that would be parked on site and asked what equipment would be parked on Mr. Giles' lot.

Mr. Giles said his utility company does road construction and he has paving equipment too.

Mr. King said paving equipment is usually sprayed with diesel fuel to keep the paving materials from sticking to them and it was on an area where it could run into the ground not on a paved surface.

Mr. Giles said he would park the paver on the tar that was already approved and it would run into the detention pond. He said he tries to keep his stuff up to par and he will park all of his equipment in that one area and would not park on the gravel area and just use it to drive on. He said he really didn't care about the future expansion right now and with the price of lumber he wasn't planning on doing it right away.

Mr. Henry asked how long a site plan approval is good for.

Mr. King said if he builds it, it is good forever and if he shows an expansion on the plan and does it 10 years from now that's fine. He said when you get an approval there has to be a substantial investment in the site within 2 years and he shows a building that is another 20% and it's not like he's showing a 100,000 sq. ft. building and has only built 10 sq. ft.

Mr. Squires said Mr. Giles wants to know what he has to do to get his occupancy permit.

Mr. King said he has to conform to the plan that was approved and whatever gets amended he has to conform to that. He would have to make the changes he would be able to build now, put them in place, have the Building Inspector approve it and get his occupancy permit. If you're going to change it later by moving the detention pond, have more impervious surface or a larger building that may take additional engineering that you will have to pay for he said.

Mr. Henry said if he comes back to the board with an amended plan to change the fence, move and screen the dumpster, hand drawn plans to increase the gravel lot to the size he wants to increase it to and it stays gravel in the amended plan the pavement has to be according to what's on the approved plan with no equipment to be parked on the gravel.

Mr. Giles said if they are parked on asphalt it goes into the detention pond and into the ground anyway. It not layered and it doesn't get sucked out its more like a septic system he said.

Mr. Henry said he is going to have to build the retention ponds as they are on the plan because there is pavement there already so those need to be there.

Mr. King said he must conform to the engineered drainage plan or he will have to have the engineering amended but for the other things he is suggesting this board is amenable to giving him a revised plan with a hand drawn sketch which would be added to the prior approval.

Mr. Giles asked if he did the future building expansion if he could still access it from the front just like it was before but it would be just a little bit bigger and if he could get that approved.

Mr. Henry said that would be no or a very small change to the amount of impervious surface. Mr. Fisher said it wouldn't be that small as it was 40' x 50' and he wants to go to 60' x 60'. Mr. King said some of the impervious area would be added to the side of the building that already is an impervious surface.

Mr. Giles said the building would increase by 10' on the north and south sides and by 20 ft. on the west side than what was already approved for future expansion on the plan.

Mr. Henry said some of the 20' to the west was for the dumpster pad already.

Mr. King said this is a conceptual discussion so it is non-binding and agreed the changes to the building sq. footage would not be required to be re-engineered.

Mr. Pimental said if that is what he wants for the future to put it on the amended plan so he has it.

Mr. Giles said if he doesn't expand it he can still put the warehouse out to that point and have access to his front doors with plenty of room and still go by the existing layout of the parking lot. He said he bought the lot next door and the rights to everything that was already pre-engineered and is pre-approved to start building on that property. He said if this is going to cost him this much money to extend on this property he will just build on that property and have two different buildings.

Mr. Squires said he is allowed to do everything he wants to do with the exception of the drainage. He can put it all on paper and attach that to the original approved plan but they can't allow the drainage change without the engineering he said.

Mr. Henry said the pavement piece is probably the sticking point and he can do everything else. He said if you watch this board you will find they do as much as they can to save the applicants money and let them do what they want to do.

Mr. King said he thought the direction Mr. Pimental gave to Mr. Giles was fine and the drainage plan would have to be re-engineered.

Mr. Giles asked if at the next board meeting he should bring back plans or if this is it.

Mr. King said he should work with Mr. Pimental and when it is ready it will put it on the agenda.

Mr. Pimental said this will have to go through the formal process for an amended site plan with a public notice and a public hearing. He said they wouldn't be able to get him on the April 20 agenda as there isn't enough time to do the noticing for that meeting.

Mr. Henry asked how much time is needed to do noticing and noted that it is only April 6.

Mr. Pimental said they need 10 days and he needs time to review Mr. Giles' application, the hand drawn plans, insure that they're complete and prepare a memo to the board so they don't get to the public hearing and find out they can't move forward.

He suggested putting it on the May 4 agenda but he would have to get the plans to Planning Dept. soon. He reminded the board he will be out of the office from April 16-25 and that he could dedicate next Tuesday to do the review and prepare the memo and the notices but Mr. Giles would have to have it to him by Monday at the latest. He added if he could get the

materials here on Friday he would make the trip up here to pick them up. He said the only waiver he thought would be needed would be for the hand drawn plans and the fencing around the dumpster is one of the covenants of the business park.

Consensus of the board was to hear Mr. Giles' case at the May 4 workshop meeting if everything is ready and if not to hear it when it is ready.

Aroma Joe's Development (Tax Map R20, Lot 023-0001, 430 NH Rt. 11):

Mr. Pimental said the owners have not done the landscaping required and this has been an ongoing compliance issue at that site. He said the board required specific landscaping to be done as part of the site plan and at the time of construction the applicant did not want to put in the landscaping because of the time of year so the CEO gave them their CO and requested that they do it in the spring. He said it was not done, the CEO has gone back and forth with the applicant several times and there hasn't been any progress to date.

He said when other communities decide to require certain landscaping it is specified in the **Notice of Decision** what needs to be done with the timing prior to a building permit and/or a CO to help with enforcement.

He recalled that the Town has a \$5,000 bond for this and the applicant has until May 1, 2021 to complete the work and if that is not done the Town may pull the bond and do the landscaping. He said he didn't know how the bond was done and if that dollar amount was provided to the Town based on an estimate provided by a forester or other professional.

Mr. King said it seems the Building Inspector was working with the applicant to let them do it in a timeline that was more permissible to the weather and they chose not to do that so the bond is in jeopardy. He asked how they go about planting trees/shrubs on someone else's property.

Mr. Pimental said he did not know how that works and they hope that it gets done by May 1 so the Town doesn't have to do anything. He said he was asked to bring this to the board to consider being more specific in the NOD to make things a little easier in the future. With something like landscaping depending on the timeline maybe the CEO could issue a temporary CO he said.

Mr. King said it is obvious that this screening was based on the through traffic not impacting the neighboring uses one of which is a residential use, the other is another business and there would be vehicles turning and lights flashing out to Route 11. He said screening to limit the impact of the drive-thru traffic is a reasonable requirement they should be meeting and he was surprised that there hasn't been any complaints from the abutters.

Mr. King asked Mr. Pimental if he has tried to contact the property owner.

Mr. Pimental said he has not tried to contact him.

Mr. King requested that he do so and discuss that this situation is going from bad to worse.

Mr. Squires asked what the repercussions are if the May 1 deadline isn't met.

Mr. Pimental said the Town could pull the performance bond.

Mr. King said they could also take them to Superior Court for not complying with a site plan and

fine him for every day he is not in compliance.

Mr. Squires read aloud the last paragraph of CEO's 3/24/21 letter to owner Aaron Wiswell that states "Failure to comply with the requirements listed above will leave me with no recourse but to request the Planning Board to revoke your approved Site Plan for non-compliance which will then void your CO and in essence close the business".

Mr. King said that typically before they do that they hold a public hearing for non-compliance with the applicant and try to work him through getting into compliance before they consider revoking it and that has another whole "spillway" of issues.

He asked Mr. Pimental to tell Mr. Wiswell the board was presented with this information and that revocation of the site plan is an action the board has taken in the past. He said court action may only be possible after the site plan is revoked and that is a question for Town Counsel but they really don't want to go there over some bushes.

Mr. Pimental said the certified mail sent to his mailing address was returned to the Town and the applicant refused to accept receipt of the letter. He said he would try to contact him and provide his perspective to the applicant to try to move this along but he didn't know if that is his responsibility. I think the Town, over the last few years has done the best they can he said.

Mr. Henry said he was also concerned about the lack of address numbers on the sign because that is an emergency issue and people need to be able to find the address. Lack of vegetation is not going to delay police, fire or ambulance response he said.

Mr. Pimental said Mr. Henry is right in that there are 2 issues that have not been addressed by the applicant-the lack of address numbers and the missing landscaping.

Mr. King said the 3/24/21 letter went to Aaron Wiswell but on the next page it states the owner's address is different than on the first page.

Mr. Henry said the property may have been sold from the original owner that received the site plan approval (Rockwell Homes/Brew Bros.) to the present owner (Aaron Wiswell).

Mr. Fisher recalled that the review was almost completed when they sold it. He said a small portion of the parking lot between Aroma Joe's and the Farmer's Kitchen was sold to the Farmer's Kitchen to increase the size of their parking lot and then everything was reviewed and approved and it was agreed that they would put the vegetation in.

Mr. Henry asked what is preventing the CEO from enforcing it now that isn't in the NOD.

Mr. Pimental said he is looking for more on if the landscaping needs to be done prior to the building permit or the CO being issued and not just that landscaping needs to be done. He said the CEO granted the CO on good faith that they would do it later on but there was nothing he could point to in NOD saying this had to be done before something was issued.

Mr. Henry said the board is being asked to change their practices because of a decision the CEO made that backfired on him.

Mr. Pimental said the CEO could have said he won't issue the CO until the landscaping was in.

Mr. King said he agreed with the CEO's decision but unfortunately the owner has not lived up to

his end of the decision.

Mr. Vachon pointed out that the CEO issued a Conditional CO not a full CO.

Mr. Henry said if it's conditional then close it.

Mr. King said the CEO just needs to revoke the conditional status of the CO.

Mr. Squires said the problem is the letter never got delivered because he rejected it and it doesn't say that in the letter he got in Nov.

Mr. Henry said the CO that was issued would say it was conditional. I don't think we need to do anything he said.

Mr. Pimental repeated that this is an enforcement issue and it was a request that the board think about the NOD if this comes up again.

Mr. King said they will do that and this will be fresh in their minds.

Zoning Verification, Certification or Determination Form:

Mr. Pimental said he drafted the Application for Zoning Determination form to get some feedback from the board given that some of the zoning was changed and the Town Planner position will be making some of the interpretations.

He said that this came up in reaching out to Town Counsel that an applicant can't apply multiple times for the same project in hopes of a different answer unless there has been a change and then the applicant can ask for another interpretation but without having something to track that with it may be harder to know if an interpretation has already been given. With some kind of form to fill out we can ensure that we track what was requested, when it was requested, what the decision was and why he said.

Mr. King asked where the form would be kept.

Mr. Pimental said in the Planning Dept. with the other forms and applications.

Mr. King said all the files in the Planning Dept. are filed by the map and lot numbers and determinations made by staff should be kept in the property file and that is where the next person would find it.

He said he agreed with this in principle but asked what would happen if he got an interpretation that he was all set with what he wanted to and then later the zoning changed or the next person reviewing it could say the interpretation might not be correct. He asked if he was told something was not permitted and then 5 years later the Planner and Town Counsel agree it's permitted if it would stand to the previous interpretation that may not have been correct. He asked if the person got the wrong answer before and they're asking again and you determine that it's the wrong answer if they should get the right answer.

Mr. Pimental said they hope this doesn't happen and they don't have to use this form often.

Mr. King said there should be a record of what the resident/applicant was told so he and the Town have it for their files. We can reproduce it and analyze it later to make sure it's still correct or not correct he said.

Mr. Fisher said if the applicant gets an answer they don't like they can go to the Zoning Board.

Mr. Henry said this says interpretation request and it is not an application. He said applications have case law attached and conversations with staff do not and an interpretation request would fall under conversations with staff.

Mr. Squires said that this could be held against the board because it's on paper and it may be more of a liability.

Mr. King disagreed and said if a resident asks the staff if something is permitted they are going to do something based on that answer so anything they tell somebody verbally they should be willing to give them in writing and that is all that this really is.

Mr. Pimental said he didn't anticipate having to do this for every request. He said he didn't think the form would be needed for where it is black and white that something is not allowed and would be used for gray areas where an interpretation is needed as to why the use does or doesn't meet the requirements.

Mr. King asked what would happen if the subsequent staff feels the interpretation is wrong.

Mr. Pimental said whoever has the authority to make the decision it rests on their shoulders to make that and stand by it whether or not there are other staff that disagree.

Mr. King asked if they are going to tell the landowner we know we screwed up 10 years ago and the guy who made the determination is not with us anymore but we have to continue with his interpretation and you can challenge it but we're not going to do anything with you. He then asked what happens when they say the interpretation was made 10 years ago and you had 30 days to challenge it and you didn't.

Mr. Pimental said the interpretations should take into consideration input from the applicant and other staff but eventually a decision has to be made and you have to live with it. If the person doesn't agree with it they have an opportunity to do something about it and if they choose not to then that's what it is he said.

Mr. King said this should be tracked but he disagreed on how long an interpretation should last and how much weight it should be given in the future when people change.

Mr. Pimental said he based this on Fisher vs. Dover case and that legal counsel sent him that an applicant can't apply for something multiple times when they have already had a decision made about it. This will be a formal request and is only meant to be when there isn't a clear answer and you have to figure out where the Town will land on this and lets us have that documented he said.

Mr. Squires asked if someone has to request a formal handwritten determination to trigger this form.

Mr. Pimental said yes.

Mr. Henry asked if he was bound to a decision if someone asking for an interpretation wasn't clear when they asked if they could do something. He gave the example of a person asking if they can have an arcade downtown and is told no when he just wanted one arcade machine in an existing business and the staff person is thinking he meant the "Fun Spot" arcades.

Mr. Pimental said in that scenario he would not be bound by it. He said if he gave a no answer and the person put in a formal request and say they are looking for an interpretation from a certain section and this is what I intend to do at this location and then you get a formal response yes or no that is what this form is intended for.

Mr. Fisher asked who the Zoning Administrator is (a signature line on the proposed form).

Mr. Pimental said the Town doesn't have a Zoning Administrator and the person interpreting the zoning uses is now the Director of Planning and sometimes the Zoning Administrator can be the Town Planner, the CEO or a stand-alone position.

Mr. Fisher said if they are going to use this form they need to spell out who is going to be the Zoning Administrator.

Mr. Pimental said it should say the Director of Planning. He said he is looking for feedback on whether the board thinks this is a good idea. He said he put a space at the top of the form for an application fee and asked the board if they want to do that for time spent by staff to do this.

Mr. Fisher said we pay taxes to pay the staff to make these decisions.

Mr. King said someone shouldn't have to pay to get an interpretation of what their rights are. He said they do need to keep the date rec'd on the form because if there is an appeal the process would initiate from that date.

Mr. Henry said setting fees is up to the Selectmen but he didn't even want to put a line on the form to ask the Selectmen.

Consensus of the board was not to charge a fee to get a formal zoning determination.

Mr. Pimental said more information about the purpose of the form could be added in the "Intro" section but he didn't want to go into it unless there was support from the board for this.

Mr. Fisher said the form could also be used to show that they treated an applicant the same as someone else with the same situation.

Mr. Henry asked how they would know where to look for it and to do that a determination form would have to be attached to every property in that zone that may ever ask to do that. He said it's another layer of bureaucracy and there is already some record if somebody has been told no such as by an e-mail.

Mr. King asked without this form, if he came in and asked if something was permitted and he gets an answer he doesn't like and wants to appeal it how he would be told that answer.

Mr. Pimental said it depends on the method that it was asked (verbally in-person or by phone or by e-mail or letter).

Mr. King said verbally wouldn't work for an appeal and asked how he would take it to the ZBA for an administrative appeal if he just has something verbal.

Mr. Pimental said they have to fill out a form for an administrative appeal and state the request that was denied. It would get written down when the appeal process starts he said.

Mr. King asked what happens if he tries to appeal a decision and say they told me that last week and the staff says the answer was given two months ago.

Mr. Pimental said an appeal application comes to the Planning Dept and if it is saying they were told yesterday but they knew it was 3 months ago that will be conveyed to the ZBA to make a decision. He said this came up recently when someone wanted to appeal a decision made 7 months ago and they let the board know it was past the date and that they shouldn't hear it.

Mr. Henry said some of the interpretations from staff would be for the Village Center where the staff can do an expedited review and any other stuff would come before the Planning Board anyway. Currently the Planning Dept. can still kick it to the board if they don't want to give it an expedited review which is optional he said.

Mr. Squires said Mr. Pimental wants to know if he should scrap this or put more time into it.

Consensus of the board was not to scrap it yet.

Mr. Henry asked Mr. Pimental how often he thought this would come out in one year.

Mr. Pimental said he hoped it was none.

Mr. Squires said the applicant could use the form to decide how to amend his plan and eventually there would be no gray area.

Mr. Fisher said the form could also be filled out by the staff to record what was asked and answered and what took place with the applicant.

Mr. Pimental said he anticipated this working as if someone asks a question and they don't know the answer they would ask the person to fill out a form so they can look into it more. He said hopefully the requests they get will be easy to figure out if it's allowed or not.

Mr. Squires said it gives the requester a timeline where they should know the answer in 5 days.

Mr. Pimental said it also gives the requester an opportunity to make their case and provides the staff with a little more information to use when making their decision.

Mr. King said if this will be an official determination the form needs to indicate what the relief is for this decision and the time limit to appeal it.

Mr. Henry said this makes it an application and the case law from Dover would apply to the decision.

Mr. King said just because a municipality makes a mistake they aren't bound to continually making that mistake. He said if the determination was made in error 10 years ago if the Town knows it was in error the case law says it stands but it doesn't have to continue to stand.

Mr. Henry asked how the Town would know that somebody else's opinion was incorrect.

Mr. King said a zoning officer could make a decision then 3 years later the Planner says it's allowed and the other person didn't look at that section so the interpretation wasn't correct and he is not bound by that previous incorrect decision.

Mr. Henry asked how they would say an opinion was wrong and they need to correct it.

Mr. King said it is similar to not being bound to an incorrect opinion by a previous attorney when a subsequent attorney determines it was incorrect. He asked Mr. Pimental to send him a link to the court case he referred to earlier in the meeting.

Mr. Pimental said that case makes the assumption that nothing has changed and the decision

was right but the applicant is coming back asking for a different result.

Mr. King said if the answer was right and nothing changed they would get the same answer. But if something has changed he would say the zoning officer didn't analyze it well enough.

Mr. Pimental said that legal counsel advised that just because a position changes that doesn't necessarily mean the decision will be different.

Mr. Henry said there could be a completely different Zoning Board 3 years from now and applicant makes a request for a variance and the ZBA says no, nothing about the zoning laws changes and then 3 years later the applicant comes in with the same application and the new ZBA says he should be able to do that and that is a hardship and that is the point of a variance.

Mr. King said the argument could have changed and you have to prove hardship and the first applicant didn't prove it and the second applicant did so it could be granted.

Mr. Henry said he is saying that nothing changes but the people sitting at the table.

Mr. Pimental said he could get more legal opinion on this but he didn't think they need to do that at this point. He said his understanding was under the scenario where just the board has changed and someone comes making that request with everything else staying the same he didn't know if that's legal or not. If nothing else, not even the criteria has changed, it's just a group with a different opinion he said.

He said he wouldn't scrap the form yet and would continue to work on it.

Site Plan and Subdivision Regulations Potential Revisions:

Mr. Pimental said he would keep this topic as a rolling agenda item and asked if they had a chance to look through the regulations and if there are things the board wants to tackle this year. He asked when they would set an end date for taking on additional potential revisions and then start working on them. He said his list includes including some agricultural standards because of the change in the zoning, reducing the redundancy between Sections 7 and 9, and changing the expedited boundary line adjustment so it doesn't need a public hearing if it doesn't create a buildable lot. He asked the board if there are any other sections they would like him to look at.

There were no suggestions from the board.

Mr. Squires asked for a copy of the court case mentioned earlier during the meeting.

Mr. Pimental said he would send it to the Land Use Assistant for disbursement to the members.

Any Other Business before the Board:

Mr. Pimental asked if the board wanted to receive on-going information on "Planning Board stuff" that is happening in the state.

Mr. Henry suggested that if the information was relevant to Farmington to send it to the board.

Mr. Pimental asked if they still wanted the information on Tiny Homes that was discussed at the previous meeting.

Consensus of the members was to receive the information of small homes and anything

relevant to Farmington.

Proposed Fox Trot Rd. Subdivision-Mr. Fisher asked for clarification on when the new subdivision off Fox Trot Road would come before the board.

Mr. Pimental said he explained to them that he won't be at the next meeting and is leaving it up to the applicant as to when they want to meet with the board and they have not yet replied.

Mr. Fisher said there is no indication of the road frontage in the materials they received.

Mr. King asked about prohibited uses within a 75' well radius protection area such as the road or another house.

Mr. Pimental said the well protection radius has to be on the lot and if it goes onto another lot they have to get an easement.

Mr. Fisher said state law says the protection radius can't go onto another lot and it must be contained on the lot that it serves.

Mr. Henry asked if two wells can be within the same radius.

Mr. King asked Mr. Pimental to look up the relevant RSA and get more information for the board.

Mr. Pimental said the state allows a well radius to go onto another lot with an easement but the Town regulations require it to be contained on one lot.

Mr. Henry asked if one well can serve multiple houses.

Mr. King said a community well can serve more than one home but they need to follow the state guidelines for that.

Mr. Pimental said this proposed subdivision does not show that intention.

Mr. Henry asked if that would work with one pump or if each house would have its own pump.

Mr. King said there are different scenarios but it is allowed under the state law. He said he didn't know if they speak specifically in the Town's subdivision regulations about community water or common use.

Mr. Henry asked if you don't speak to it if that means you can do it or can't do it.

Mr. King said the Town has a restrictive zoning ordinance so if it doesn't speak to it it's not permitted.

Mr. Pimental said he would look into more information on community wells.

Mr. Fisher then read aloud from page 27 of the subdivision regulations that on site water supplies shall conform with the criteria of the Water Supply and Pollution Control Division of NH Dept. of Environmental Services and it details the amount of water it must produce and monitoring requirements. He read the well radius shall be within the boundaries of the lot served by the well and it doesn't say anything about crossing boundary lines and well radius easements covering neighboring lots are not permitted in new subdivisions to protect water sources and allows for flexibility of neighboring septic systems and promotes the free use of property unencumbered by easements.

Mr. King said they can waive subdivision regulations but it sounds pretty strong that they don't

want to.

Mr. Pimental said this is something they can talk with the applicant about. He said the only other thing that jumped out at him was the Fox Trot Road looks like a low volume residential road with a subdivision cul-de-sac coming off of it and that is something for the Fox Trot Road residents to consider.

Mr. Squires said there is also a business on that road.

Mr. Pimental asked if Fox Trot Rd. is a public or private road.

Mr. Squires said he thought it is a Town road as he has seen Town trucks servicing the road.

Mr. Pimental asked if it is a cul-de-sac as well.

Mr. Squires said it is a dead end.

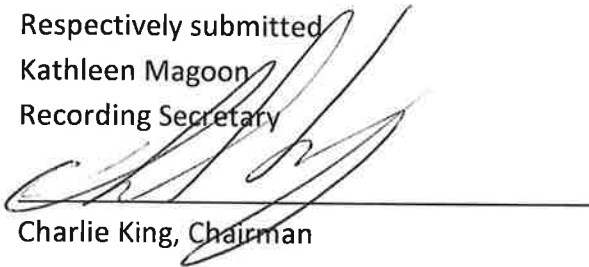
Adjournment:

Motion: (Vachon, second Squires) to adjourn the meeting passed 5-0 at 8:10 p.m.

Respectively submitted

Kathleen Magoon

Recording Secretary

A handwritten signature in black ink, appearing to read 'Charlie King', is written over a horizontal line. The signature is stylized with a large, sweeping 'C' and 'K'.

Charlie King, Chairman