

Town of Farmington
Planning Board Meeting Minutes
Tuesday, February 19, 2019

Board Members Present:

David Kestner, Chairman
Bill Fisher, Secretary
Stephen Henry
Rick Pelkey
Bruce Bridges
Charlie King

Board Members Absent:

TJ Place, Selectmen's Rep., excused

Others Present:

Arthur Capello, Town Administrator
George Mucher, Peter Mucher
Randy Tetreault, Norway Plains
Maureen Tomasiunas
Diana Proulx, Planning Dept. Secretary

BUSINESS BEFORE THE BOARD:

Call to Order:

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

Pledge of Allegiance:

All present stood for the Pledge of Allegiance.

Review of Minutes:

February 5, 2019 – Page 3, fourth paragraph, 1st sentence, add “will” before “allow”

Motion: (King, second Fisher) to approve as amended passed 5-0.

Discussion: Alternate Signature for Mylar and NOD Compliance Deadline:

Mrs. Proulx said the Town Administrator asked to have this item put on the agenda so that the board would discuss potentially naming someone to sign the Mylar and Notice of Decision (NOD's) in place of the Chairman if needed. She said that usually the Chairperson comes in to sign them or the items are sent to the Chair for signatures and she did not know who else has the authority to sign them if the Chair is not available in time to meet compliance deadlines. Chairman Kestner said this is what takes place with him so he was not aware of what the issue is. He said he often is not in the local area as his job takes him across the state and after a phone call to him it may take a day or two to come in to sign something. He said that he is a volunteer and that his job has to come first and that things may change a month from now following the election of board officers.

Mr. King asked if there was something specific that was delayed for any amount of time.

Mrs. Proulx said Mr. Knight said that a signature for his solar farm project (corner of Cocheco Road and Main Street) was a year overdue.

Mr. King said that may not necessarily be due to the Chair's inability to sign but could be due to something that got lost in the paperwork.

Chairman Kestner said there is nothing in the Planning Board rules and procedures that specifically indicates who will sign items and once notified he would try to get into sign things as best as he can.

Mr. Henry arrived the meeting.

Mr. King said he was board Chair for quite a few years and that it was “pretty rare” to have something that had to be signed right away.

Mrs. Proulx said the issue is with being out of compliance for 30 days waiting for a signature and some of the entities have to be recorded more quickly.

Mr. King said the board meets twice a month.

Chairman Kestner said everything had been getting signed while they still had a Town Planner. He said he “signed his life away” every 2 weeks before or after the meetings and that he had no idea what happened with the Knight paperwork.

Mrs. Proulx said there were also a few things in November that weren’t signed in a timely manner but it may have been due to the staff changes at that time.

Mr. Fisher asked if Mr. Capello as the Town Administrator and interim Planner could sign documents in place of the Chair if needed.

Mr. King said typically these things need to be signed by the Chair and the Town Planner is responsible for getting them signed but can’t sign things themselves.

Mr. Kestner said outside of a medical emergency he didn’t see anything in writing that would allow them to change the procedure.

Correspondence:

Regional Impact Public Hearing- The board reviewed a copy of the Notice of Public Hearing from Gilmanston Planning Board regarding an application to install a communications tower in Gilmanston.

Chairman Kestner said the Gilmanston Planning Board felt this project has a regional impact and the notice is notification of a Public Hearing that has already taken place (Feb. 14).

Any Other Business before the Board:

Labbe Subdivision Update- Mrs. Proulx said Town Counsel wanted to update the board on the 3 lot subdivision located at 139 Governor’s Road.

Mrs. Proulx said the surveyor used old deeds/maps which didn’t include a small piece of the property so it wasn’t properly conveyed to the new owner. The title company discovered the problem and passed it on to the new buyer. Now Ms. Labbe wants to cut this piece off and have nothing to do with it which would make it a non-conforming lot she said.

She said Att. Roman wanted to let the board know that they are trying to resolve the issue without coming back before the board for another amended subdivision plan.

Randy Tetreault of Norway Plains said Att. Roman and the title company also called him. He said some of these small “schoolhouse lots” were given to other entities in the town when they

were given up as a school. In this case the Grange ended up with it and then deeded it to these owners. In one of the subsequent conveyances the reference to this lot was not included in the deed to the next title holder so this is a title problem not a boundary problem he said.

Mr. King asked if the issue occurred when the lot was conveyed from the Grange to next owner.

Mr. Tetreault said the conveyance from the Grange to next owner was fine but it got left out sometime after that.

Mr. Henry asked what the solution to the problem is.

Mr. Tetreault said they will have to go back through the chain of owners and get someone to convey it to someone.

Mr. Henry what they would do if those people aren't around anymore.

Mrs. Proulx said the people who lost the property are around but the title company wants the Town to correct it by correcting the subdivision and they keep telling them it is not a Town issue which is why Town Counsel got involved.

Mr. King suggested that one of the buyers could use their title insurance to rectify the situation.

He said they may have to "incentivize" someone to correctly pass the title to them.

Mrs. Proulx said Ms. Labbe requested a meeting with the board to bring this information to them but Town Counsel advised her to let it go for now and let the Attorney deal with it.

Chairman Kestner said it is a title company issue and not a Planning Board issue.

Mr. King said that it is a public meeting and Ms. Labbe could come in and try to plead her case before the board. The answer is there is nothing the board can do to solve it unless Town Counsel advises them there is something they can do and right now she is advising us to stay out of it he said.

In Appreciation - Mr. Capello joined the meeting and said the Selectmen have decided to dedicate a page in appreciation to Martin Laferte in the Annual Town Report. He asked the board to submit information about Mr. Laferte's service to the Town as soon as possible.

Mr. King said there should be a list of the boards and commissions he sat on.

Mr. Kestner said Mr. Laferte was involved in about half a dozen committees and boards including the Economic Development Committee, Cocheco River Advisory Commission, Strafford Regional Planning Commission, the Planning Board, Capital Improvement Plan Committee and as a rep to the Coast Bus Advisory Board.

Mr. Henry suggested that if Mr. Laferte is present at Town Meeting that he is asked to make the motion to adjourn the meeting as was his "job" on the Planning Board.

Mr. Capello said he didn't know if Mr. Laferte would stay that late but that it is an excellent idea.

Mr. Henry said if Mr. Laferte is present at the end of the meeting he will request that the Moderator allow him to make the motion to adjourn the meeting.

Mr. Fisher said he would try to meet with Mr. Laferte and talk about his service to the town.

Mr. Kestner then updated Mr. Capello on the board's earlier discussion about finding an

alternate signatory for the Mylar and NOD's. He said as the interim Planner it will be up to Mr. Capello to make sure all of the "sign here's" are brought forward to him.

Mr. Capello said he would work with Mrs. Proulx to make sure the items needing signatures are brought forward. He said the board can choose an alternate to sign the items in the event the Chairman is not available and that it is usually the Vice Chairman.

Master Plan Draft - Mrs. Proulx said that Stuart Arnett of ADG asked to meet with the board at their March meeting to discuss changes made to the draft outline for the Master Plan.

Chairman Kestner said the board reviewed the 1st draft at the previous meeting and had a good discussion about some suggested changes to the draft. He said the board received draft 2 at that meeting and requested that the review of 2nd draft be done at this meeting.

Mr. Capello said the members were asked to send any questions or suggested changes to him and that he would forward them to Mr. Arnett but no one submitted any feedback.

Mr. Kestner asked to put Mr. Arnett on the March agenda for additional discussion of the draft.

Recess: Motion: (King, second Kestner) to take a 5 minute recess passed 6-0 at 6:30 p.m. The meeting reconvened at 6:50 p.m. in the Selectmen's Chambers.

PUBLIC HEARINGS – 6:30 P. M.

NEW CASES:

Application for Minor Site Plan Review by George J. Mucher, Jr., Norway Plains Associates, Inc.; Randolph Tetreault, L.L.S., Agent. To subdivide existing 43.55 acre parcel located on Elm Street/Route 75, (Map R-34, Lot 20). Subject lot is located within both the Suburban Residential (SR) & Rural Residential (RR) Zones. Minimum lot size is one (1) acre with minimum frontage of one hundred fifty (150) feet. Proposed lot R-34, Lot 20-2 to consist of 5.20 acres (226,455 SF), Street Frontage of 400.01'; Remaining lot of 38.35 acres, Map R-34, Lot 20 (1,670,455 SF) with 455.61 feet street frontage.

Mr. Tetreault said this is a 2 lot subdivision creating one new 5 acre lot on Route 75/Elm Street. He said he was before the board last month for a conceptual discussion of the plan and that nothing has changed other than the state driveway and wetlands permits were submitted. He said the existing parcel is 43 acres and they intend to cut out 5 acres from that parcel and the lot will meet the requirements for lot size, buildable area and frontage.

Mr. Tetreault said for flexibility purposes they wanted to provide an extra area in the back of the lot. There's an area in the front that meets the requirements but may not be large enough for owner so they applied for a culvert crossing over the intermittent stream to allow access to the larger buildable area in the back of the lot he said.

He said the reason for the common driveway is because there is a large amount of wetlands on the Milton side of the property which would prohibit access for the parent lot from that portion of the frontage on Route 75.

Mr. Tetreault then went to site plan and pointed out the lots and abutters. He said they did a

wetlands survey on the whole parcel and are asking for a waiver on the topography survey on the entire parcel as the remaining lot is not going to be developed at this time. He said they included the pertinent site features for the proposed lot including the driveway so that everyone can see what is existing and the areas that could be used for a single family home. Mr. Tetreault said he brought the driveway plan so the board could see what will be submitted to the Wetlands Bureau for the culvert crossing. The proposed gravel driveway will be 16' wide with a 15 inch culvert placed at the intersection of the driveway and Route 75. The drainage configurations were included in case the driveway was to be paved in the future he said. He said the culvert at the stream crossing will be a 36" corrugated plastic pipe and does not have to be open bottom as the stream is intermittent. That will allow access to the second buildable area at the back of the new lot should the owner decide he needs more room than is in the front area. If the applicants receive their wetlands permit they will have 5 years to put in the crossing he said.

Mr. Tetreault said there is an existing tote road that goes all the way through the property that crosses both streams with old agricultural type crossings (rocks, etc.) and future development of the upland areas of the remaining property would require installation of a span or culvert crossing over the stream.

He said the lot does not have access to Town water and sewer so a septic system and well will be required and electric/cable access is available from Route 75.

Mr. King asked about the disturbed area at the crossing or if it is a permit by notification.

Mr. Tetreault said it is minimum expedited permit because the stream is intermittent. He said the disturbed area is less than 3,000 sq. ft. and estimated the total temporary and permanent impact is about 1,500 sq. ft.

Mr. King asked for the maximum amount of disturbed area to qualify for a permit by notification.

Mr. Tetreault this culvert at 36 inches is too large to qualify for permit by notification and will have to undergo the standard review process. He said it not just about the square footage of disturbed area but also has to do with the purpose of the disturbance. He said the permit by notification saves a lot of time as it could be received in 2 weeks but if there is even a typo the application must be resubmitted and the fees must be paid again. The state is in the process of potentially changing the procedures in an effort to shorten the length of time it takes for the permitting process for applications with smaller impacts without compromising the review he said.

Chairman Kestner asked if the driveway will be added onto the application.

Mr. Tetreault said the Town gets a copy of the wetlands permit package and it can be added as a supplement to the application. If the board were to approve the application at this meeting it would be subject to the wetlands and DOT (driveway) permits he said.

Chairman Kestner said the plan contained the notation "TBR" (to be removed) regarding the

existing shed partially within the common driveway. He said he was pleased that the applicants listened to the discussion and recommendation to move it at the previous meeting.

Mr. Henry asked if it would have been the board's intention to make them move the shed. Chairman Kestner said that potential does exist down the road it could be within the lot line depending on where the back parcel goes.

Mr. King said it would create a non-conforming lot which isn't allowed.

Mr. Kestner said if the parcel is sold to a third party the shed would have to be addressed.

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

Mr. Henry asked if the large lot that remains meets the board's definition of rectangular.

Chairman Kestner said it is considered a very large rectangle.

Mr. King said the intent of requiring generally rectangular lots was to not have lots with excessively irregular shapes rendering them not very usable. He said he did not have an issue with this lot but understood Mr. Henry's point about how the board would address it.

Mr. Henry said he did not have an issue with this lot either but was concerned about setting precedence for the next applicant. He asked if this plan would require a waiver to the rectangular shape requirement.

Chairman Kestner said a waiver may be required of the applicant who purchases the parent lot at some point down the road.

Mr. Henry said they would be creating that lot now.

Chairman Kestner said they are creating the secondary lot from the original parent lot. The original parent lot is still basically a rectangular parcel with a dog leg going out to Route 75. The dog leg is wetlands and unusable and they are trying to set aside a 50' right-of-way to access the parent parcel for future use.

Mr. Henry said he understood that but that the Town has a regulation that says "generally rectangular" and the large lot is not generally rectangular. He asked if they should require a waiver request to "cover" everybody and then consider the waiver.

Chairman Kestner said this wasn't noted as an issue at the conceptual meeting.

Mr. Pelkey said the board was not taking action on the original lot which was created before this board sought to deal with this plan. He said he had no issue with the existing lot and this board didn't create the existing lot.

Mr. Henry asked if the current lot number on the large parcel would stay the same and that they are just cutting a piece out of it.

Chairman Kestner said that is what is proposed.

Mr. King said there are 2 ways to handle this- with a waiver or by consensus of the board that it meets the spirit and intent of the ordinance and does not require a waiver or a change to the plan. The minutes will reflect the discussion so that later applications where it comes up those boards can refer back to that discussion to see why we made the decision we made he said.

Mr. Fisher said they should decide by consensus and not force more paperwork on the

applicants by submitting a waiver. It's not an exact rectangle but it has buildable area and is not a trapezoidal, star-shaped or kidney-shaped lot. I believe it meets the intent of the ordinance as anything left over can be further subdivided into rectangular lots of appropriate sizes he said.

Mr. Pelkey agreed and said the dog leg and the wetlands are not part of the parcel and they are not worried about the shape of that part of the parcel or about it being developed. The access to the back lot is along the right-of-way that is being created now he said.

Mr. Henry reiterated that he has no problem with it but that he did not want to create problems in the future.

Chairman Kestner asked for the consensus of the board.

Consensus: the board is fine with the parent parcel staying as it is drawn on the subdivision plan.

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

He asked the board to address the 2 waivers requested by Mr. Tetreault in regards to the original parent parcel which are as follows:

Section 9.B.4 & 7 –existing grade and topographic contours and natural features on remaining land;

Section 9.C.1-15 – requiring proposed grades, topography, road construction, drainage, traffic control, bridges, culverts, parking, sewage facilities, storm water runoff, open space, etc.

Motion: (King, second Henry) to approve both waivers as they are consistent with prior granting of a waiver where we don't require a large parcel to be fully "topo-ed" and surveyed in the areas that are not immediately going to be developed passed 6-0.

Mr. King suggested approval of the plan be contingent on receipt of the DOT access permit and the wetlands permit for the crossing.

Chairman Kestner said an additional contingency would be the addition of the driveway plan to the subdivision application package.

Mr. Henry said if the crossing is denied they still have a usable lot there.

Mr. King said the Chair would not sign the plan if the crossing is not approved because one of the Conditions of Approval has not been met.

Mr. Henry asked if they want to make it a Condition of Approval because if they don't get the permit they can still build on the front lot.

Mr. Tetreault said they feel comfortable about receiving the permit based on what they know and didn't push the idea of being able to build on the front lot without a crossing permit.

Mr. King said that would change the application to a certain extent because they're showing they may build on the back of the lot. If they don't get that access they would have to build in the front buildable area and further studies of that area could show they need to do something other than presented he said.

Mr. Tetreault said it does change what the board would be approving. If Mr. Mucher decides it's cost effective and that he needs the extra room to build out back they will put the crossing

in. If he is going to build in the front all the board is approving is that the wetland permit gets approved and then he will have 5 years to put the crossing in he said.

Mr. Henry said that even with the guidelines proposed by Mr. King they don't know where they are going to put the house and they may never put the crossing in. He asked if they need to approve the crossing to approve the subdivision.

Chairman Kestner said as presented, they would need the DES permit because they are presenting it with the potential to build on the back portion of the lot not on the front portion.

Mr. Henry said Mr. Tetreault flat-out stated they don't know where they are going to build.

Mr. King said that during the presentation the only access to the parent parcel is through the culvert crossing if the ownership changes. Without it we would be creating a lot that doesn't have approved access he said.

Mr. Henry then said he was looking at the access to the back of new lot and agreed there would be no access to the parent parcel without the crossing.

Mr. King said the board has to consider that the ownership could change and the potential to further subdivide the large parcel and how they would provide access to those lots.

Mr. Henry said if Mr. Mucher decides to build on the front of the lot because it is too expensive to build in the back, he has a 5 year permit and doesn't put the culvert in and then the state changes the regulations the back piece is still cut off. He asked if they should require that the crossing be put in even if he doesn't build out back.

Chairman Kestner said the owner would have to deal with state regulations at that time and reapply for subdivision approval from the board. That parcel could become null and void if he can't get to it if the state decides to change the DES guidelines he said.

Mr. Tetreault said they can always get to the parent lot because they could span the crossings with a bridge without a state permit as long as it is not within the top of the stream bank.

Mr. Henry said Mr. Tetreault had addressed his concerns. He said he thought that the board should not require that the culvert be put in as a Condition of Approval because even without the permit they can still span the stream.

Mr. Pelkey said the culvert crossing is shown on the plans presented to them so it is part of the application. He said if they approve the application they are approving it as presented including the culvert.

Mr. Tetreault said he advised the applicants to put the culvert in after the permit is received if they are going to go through the expense to set it up this way because if they have to go back and address it later there will be more expense and if the regulations change they usually don't get less restrictive.

There were no questions/comments from the public present.

Chairman Kestner closed the public comment portion of hearing at 7:25 p.m.

Motion: (King, second Henry) to approve the application with the following conditions:

1). obtain a DOT access permit off the state highway; 2). Receipt of the wetlands crossing

permit for the 36" culvert; 3). Add the driveway plan to the Planning Board package supplied for the application approval;

Vote: The motion passed 6-0.

PROPOSED ZONING CHANGES - 2.05 VILLAGE CENTER DISTRICT:

Mr. Fisher noted the inclusion of this item on the agenda and asked if there was anything the board needed to discuss further as they had addressed this at the previous meeting.

Chairman Kestner said he thought they had taken care of the second public hearing for the zoning changes at the first Feb. meeting. He said they were informed the hearing was past the deadline for inclusion on the Town Meeting ballot but they held the 2nd hearing anyway and then tabled the matter to be revisited in November for two more public hearings. This was stated in the minutes appropriately he said.

Motion: (Kestner, second King) to table this matter to be re-noticed and re-discussed at 2 public hearings in November and December so that the proposed zoning changes can be added to the Town Meeting warrant for 2020;

Discussion: Mr. Henry asked if they could make a motion now that would require a future board to do something in November.

Mr. King said they are tabling the matter and the board at that time can choose to pick it up or not pick it up off the table.

Mr. Capello suggested the motion be simplified to just table it until November because the public hearing deadlines for next year's warrant are unknown at this time.

Chairman Kestner said he did not specify any dates in his motion and just picked the months of Nov. and Dec. to revisit it so it can be noted formally.

Mr. King added the next board may not want to bring it forward.

Mr. Pelkey suggested if there is a problem they can always add it to the agenda and revisit it.

Vote: The motion passed 6-0.

Adjournment:

Motion: (Fisher, second King) to adjourn the meeting passed unanimously at 7:32 p.m.

Respectively submitted

Kathleen Magoon

Recording Secretary



David Kestner, Chairman