

JOHNSON SELECTBOARD
FORM BASED CODE PUBLIC INFORMATION MEETING MINUTES
JOHNSON MUNICIPAL BUILDING
TUESDAY, AUGUST 7, 2018

Present:

Selectboard Members: Mike Dunham, Nat Kinney, Doug Molde, Kyle Nuse, Eric Osgood
Others: David Butler, Jim McDowell, Phil Wilson, Paul Warden, Kim Dunkley, Charles Gallanter, Scott Myers, Charles Witherall, Pam Witherall, Margo Warden, Linda Hill, Howard Romero, Mark Baker, Angela Barton, Linda Molde, Rosemary Audibert

The hearing started at 7:00.

Eric asked David Butler to summarize the difference between form based code and regular zoning. David Butler said with normal commercial zoning the Dollar General may not have been allowed to be where it is. With form based code, if that area were covered by the code, the Dollar General could be there but it would have to look like the Forget-Me-Not Shop. It would have to fit into the existing structure of the town. Form based code says you can do anything you want in your structure, provided your structure fits our idea of what we want in town.

Doug asked what area the form based code would apply to if it is passed. David said it would apply to part of the village. Phil Wilson said it applies to about half of the village – from the west edge to Collins Hill and the base of Clay Hill.

Charles Gallanter said he was amazed at Doug asking that question after having voted for form based code. Doug said he didn't ask it for his own edification.

David said it didn't make sense to the Planning Commission to split someone's lot and say only part of it was covered by form based code, so they redefined the boundaries and went by ownership. If part of a lot was in the covered area they extended the area it so the whole lot was in it.

Jim MacDowell asked what the driver behind the setbacks was. David said it is almost entirely driven by patterns and aesthetics. They wanted to see a continuation of the Main Street project design: street, green space, sidewalk, then building in order to make Johnson a very approachable village that is comfortable to walk. Jim said he understands that for street-side setbacks but he was interested in rear setbacks in particular. David said a lot of what the Planning Commission did is focused on the face of the building. In the case of a deep lot, if you build a second building behind the first one, what they decided to control was what you can see from the center of the street. If you can't see the second building from there it doesn't matter what it looks like. He doesn't think there is a rear setback. The code is geared toward what people see as they drive by.

There was a question about whether the code addresses what type of exterior siding must be used. David said no. It addresses glazing and in the middle of the village it addresses first floor height. We would like to see buildings with tall windows. Charles said the code doesn't specifically address building materials but there is a maximum width before you have to have a

change. David said the change does not necessarily have to be in the siding. It could be something else, like a recess or bump-out. Phil said that is only in the downtown area.

Charles asked if it is a problem that 5 Planning Commission members are here when this was not warned as a Planning Commission meeting. Eric said the legislature addressed that. If a quorum of members of one board are at a meeting of another board and they are not taking action, it is all right.

There was a question about whether the code addresses colors. David said it does not.

Scott Meyer asked, to make sure this sticks this time, is everything in the process being done correctly? Eric said the voters will determine the question one way or another on Tuesday.

A community member asked, once this is voted by the public, is there a way to undo it again? Doug said the selectboard could amend it. Eric agreed. It could be changed, like any ordinance. David said if there is something in the document that is not working well, there is a process to change it and it should be changed. The vote is a final vote to adopt or not adopt this document. Eric said in the future the selectboard, working with the Planning Commission, could make changes like expanding it to the whole village. David said the Planning Commission would take direction from the selectboard. They would present any change to the public in 2 or 3 meetings and then the Planning Commission could choose to adopt it.

Scott asked why we are here now. Eric said when the voters voted on town meeting day, that was a non-binding vote. It was just an advisory vote to the selectboard. The selectboard voted to adopt form based code. Then a petition was raised requiring the voters to decide on the ordinance. That vote will take place next Tuesday. Prior to the vote the board has to have a public hearing. This is the public hearing. Nat said any time an ordinance is passed the public has the right to raise a petition with a certain number of signatures to have it go to a vote of the town. That is what happened. It is not that something was botched. It is part of the process.

Scott asked who collected signatures for the petition. Charles Gallanter said he did.

Kim Dunkley talked about the history of how this form based code came to be. She said there was interim zoning that was much more stringent than form based code. It ran out and people didn't like it so it was not voted in. Then the board tried again to pass zoning, but it didn't pass. She thinks it was put on the back of the ballot and a lot of people missed it. This last cycle the town put in \$10K and hired a facilitator and put together a steering committee. The committee worked really hard with the Planning Commission for about 2 years. They threw out any references in code to uses. They worked on creating something people in Johnson could accept. It only addresses how buildings look. The biggest fear she has heard is that it is just going to spread. This petition shows how the townspeople can make it what they want. We can make it bigger or smaller.

Scott said he was on the original steering committee. On the committee there were town elders, businesspeople and newbies all working together. They pretty much reached consensus on the document they handed over to the Planning Commission.

Charles said in circulating the petition one thing that became clear to him was that the people opposed to zoning and the people in favor of it weren't talking to each other. It's true that the steering committee had a diversity of types of people but their attitudes were not diverse. And the people opposed and in favor are still not talking to each other.

Kim asked what the biggest complaint of those opposed was. Charles said there is no grandfathering of current ownership. If he owns a property he has to comply tomorrow. That is probably the biggest complaint. Something is being taken from current owners without compensation. Another concern is that it will spread. People might be okay with it if it were just for the village but the concern is that, as a town ordinance, it will spread to other parts of the town. Some people won't move here because there is zoning. He talked to one couple who moved here because there wasn't zoning. Philosophically he doesn't agree with it.

Kim asked if they said why they didn't come to give input so the Planning Commission could hear it. Charles said David claims he tried to get people on the steering committee.

David gave an example of a long-time resident he talked to about form based code who said he was against it because it's zoning and he doesn't think there should ever be zoning so he would vote it down. There are many people in the northeast who feel they should be able to do whatever they want with their piece of property. To a large extent he doesn't disagree with that but he thinks there has to be some control to protect what we want. The Planning Commission wrote in many exceptions. All you have to do is come have dialog with people in town. Kim said it is important to know that there is a review board that can make an exception.

Charles said the development review board could include people who are design professionals and if you don't hire them to design your building it might not get approved. Scott said that would be a major conflict of interest. Charles said preventing that could have been incorporated in the document but it isn't. David said any regulation or policy is subject to that kind of conflict of interest and we need to be vigilant about it.

Charles said a further concern is cost. No one knows what it's going to cost. At town meeting, the budget was slashed by \$3K and the budget doesn't include any of this. How much will it cost and where will the money come from?

David said there aren't that many building projects covered by this code. He might have seen two in the last year. Kim said the fee from the permit would help cover the cost. The clerks downstairs could easily be trained to hand the piece of paper to the person and tell them to read it and fill it out. In gathering information from other towns it didn't sound like that was a major cost. We would have a volunteer development review board that probably won't be called in much. Nat said we looked at other towns in Vermont that have adopted form based code. The consultant we brought in was from Newport, a bigger town. Their costs have been very minimal. Anything we do we can get sued for and then costs can spiral out of control. Based on the best information we have, other towns' costs have been very minimal. David said for this town, provided we can fill the development review board with willing volunteers, the cost will be zero

unless the town is sued and then he assumes that cost would be covered under liability policies. The people who work downstairs are already being paid a salary.

David asked Charles, in the last 12 months how many building projects have been started that fall under the scope of this process? Charles said he doesn't know about new building projects, but people have remodeled, which requires something. He doesn't know if they have to pay for a permit. He is aware of at least two. It could have been 200. David said there have been two projects in the last 12 months. He doesn't think that is an added stress on the employees we have. Rosemary said that little amount would not be that expensive. David said one of the two projects – the church – was already covered by Act 250. Charles said he wasn't even counting the church.

Eric said we don't know the cost. If this passes on Tuesday, we still will need to put a review board together and get forms established. Before we need to develop our budget for next year maybe we will have one project and that will give us a feel for how much this will cost. Whatever we feel it will cost, the board will put that in the budget.

Kim said if it is very expensive and everyone sees that maybe townspeople will circulate another petition. We have to try it.

Doug said having driven about 5000 miles this spring across Canada and the US and seeing how towns our size have been emptied, he feels that if we had 5, 10, 15, 20 or 30 building projects we would be happy to pay the cost of that to move forward and also have an idea what they would look like.

A community member asked, if this is voted in and there is no grandfathering, what type of compliance would people be asked to make to their homes? Planning Commission members explained that people aren't grandfathered, but buildings are. Owners don't have to come into compliance for existing buildings. Owners can repaint, put on new siding, etc. But if a building is modified it can't get further away from compliance. David said if you modify enough of the front part of the structure to trigger the process you are all right as long as you can show with your building plans that you are moving towards compliance with the code.

David gave an example of something else the Planning Commission debated about. Originally the code would have required a permit for modifying a front deck or front porch but the Planning Commission decided that was not necessary. We strongly encourage you to have a front porch or entry deck. The code is based on keeping the building structure looking like it does and maybe improving it over the next few decades. It's not about telling you exactly how far to be from the sidewalk. There are some suggested setbacks but there is nothing in the document that is absolutely concrete. If you have a reason for doing something different, just bring it to the development review board and assuming the DRB agrees with your reason, it will be fine.

David said he loves the renovated Mobil station. The only thing he can see that would be a small improvement would be some trees to block the pumps from view as you come around the corner. Skip Vallee did a wonderful job. It took several meetings with him. He volunteered to do things the Planning Commission wanted. He agreed to fake a story and a half when the Planning

Commission wanted 2 stories. He changed the building location. He got rid of a few parking spaces he had planned and put in lawn instead as requested.

Charles said that was voluntary. It didn't require code. Kim said the form based code pulled in the dialog. David agreed. Charles said it could be part of the town plan.

Scott said voluntary compliance doesn't work. If we relied on voluntary compliance we could have a box store in downtown Johnson and we could do nothing to stop it.

Doug said he thinks Skip Vallee is a sophisticated person who has done this many times. He went through Act 250. There was extensive communication. It wasn't the case that there was nothing applicable to Vallee. Act 250 applied. It does not apply to anything under an acre.

A community member said very few big box stores can provide parking and a lot on under an acre. Charles said he doesn't see that being an issue as a practical matter. Doug said there are a number of lots in the village under an acre that could be developed outside of Act 250. Charles said they're not going to be big box stores. Another person said no, but one could be a Dollar Tree. Phil said with form based code an owner could still develop any property. It only controls the looks of the building. There is no use control. Doug said his understanding is that these stores want to spend a certain amount of money coming in and setting up and they choose not to come in where they can't build in the fashion they want to.

Mike asked Charles if he will refrain from starting another petition if this passes on Tuesday. Charles said he makes no promises. Nat and Eric said they don't think there is an option for a second petition. Mike said Charles might be able to find some loophole that it wasn't done properly. But if it passes overwhelmingly it would be nice if Charles would not try to do that.

A community member said she is guessing that any town or village that adopts form based code sets up their own parameters of how they want it to look. Eric said that is correct. The community member asked if there is a page that tells what our parameters are. Kim said there are building envelope standards for each of the zones on the map. Those say what the parameters are. Howard Romero said those were established by walking around town and looking at existing buildings. Kim said the code is online on the town website.

Jim MacDowell asked, if this passes is there any reduction in Act 250 oversight in this area? David said if we have something like this in place we have a stronger position under Act 250 to dictate what a structure looks like. In the case of Maplefields, if this had been passed prior to Skip Vallee getting Act 250 permits the building would have been a 2-story structure. It would have had the bump-outs and entrances we wanted to see because they are in the code.

Jim said he thought once zoning was in place the acreage threshold for Act 250 to apply became larger. David said the only change in the process is that we have a voice. We have always been a party but our requests were just suggestions. With this, we have a choice.

Doug said there are towns where Act 250 applies to properties 1 acre and up and those where it applies to properties 10 acres and up. You're a 1-acre town if you don't have zoning and

subdivision regulations. We don't have subdivision regulations so he thinks even with zoning we would still be a 1-acre town.

A community member asked, the town clerk's office would have nothing to do with this other than handing out forms and the development review board would receive and handle the forms? David said that is not quite right. As part of the process somebody (probably the Planning Commission) will develop a checklist. The town offices will have to issue a building permit. The community member asked, do they issue one now? David said no. With form based code, if a property owner is doing anything they will have to get a building permit. There will be a checklist someone will go through to see if the permit should be issued. It will be a very short process. Assuming the criteria for a permit are met, they will be issued a permit with a small fee. The community member asked who will issue the permit. Eric said someone will be identified as administrative officer.

David said the development review board does not get called into play until an application is denied by the administrative officer and the applicant petitions to take it to the DRB. In 99% of cases he looked at online, that is not an onerous process. You come before some townspeople and say you really want this and what your reasons are and either the reasons are justifiable or not. If they are justifiable he doesn't see anyone saying no.

Howard said as he understands it, the checklist is simple, straightforward and completely objective, not subjective at all. Decisions don't rely on opinion.

Hearing no further questions or comments, Eric adjourned the hearing at 7:45 min.

Minutes submitted by Donna Griffiths