

**TOWN OF SUTTON**  
**Planning Board**  
Pillsbury Memorial Hall  
Meeting Minutes  
April 30, 2013

**Present:** Planning Board Members: Carrie Thomas, David Burnham; Julie McCarthy; and Dan Sundquist: Ex-Officio; (members Peter Blakeman and Bob DeFelice and alternate Roger Wells were absent); Walter Mitchell, town counsel; and Laurie Hayward, Land Use Coordinator; and interested members of the public.

Carrie Thomas came forward as Acting Chairman

**The meeting was called to order** at 7:00PM, by Carrie Thomas

**Public Hearings:**

The Chair asked the Land Use Coordinator (LUC) if the application is complete. The LUC responded that the application is complete. The Chair then stated that the Board has reviewed the application and could not see that there was a difference between the plan that was submitted in 2008 and the current proposed plan. She asked applicant to come forward and speak to this question. Jeff Evans came forward and explained that in 2010 they completed a minor subdivision that took out two lots and now they are coming back to take out two more lots. The Chair asked if there is any substantial difference between the subdivision currently proposed and the one proposed in 2008 which was denied. Mr. Evans stated that there was no difference except that this is a minor subdivision and that was a major subdivision. Carrie explained that she was only addressing the plan in terms of lot number, size, and locations. Dan Sundquist added that the plan does appear to be identical. Mr. Evans stated that the Sutton Town Ordinances do not state that an applicant cannot resubmit the same denied subdivision again or give any guidance in terms of length of time between submissions. He noted that many towns do have such a limitation in the regulations; but, Sutton does not.

Walter Mitchell address Mr. Evans statements, saying that there is a preliminary question that the Board has to take into consideration whether they have jurisdiction on this case. The two important items to consider being, first, the subdivision and whether there was a substantial change and, second, whether there has been a change in the status of the roads, the road condition being the reason for denial of the request for subdivision in 2008.

Dan Sundquist spoke stating that, the issue is that the proposal brings forward the same five-lot subdivision denied in 2008 and that the roads are in the same condition that they were at that time. He stated further that the Select Board has taken up the issue of improving the road and plans to begin work in 2013. There will be ledge blasting, tree removals, laybys, essentially all of the things spelled out in the 2010 case and for which the

2010 exaction fee was required. That exaction fee remains in escrow and is intended to partially cover costs to improve Birch Hill Road along with town funds. Were those road improvements now completed, the Board would be in a position to move ahead and take up the current application. But, those improvements are not in place. The town may be able to take care of this through work currently planned by town employees and others. It may, however,

*Approved June 11, 2013*

take more than a year and may require approval of additional funds through Town Warrant next year. The Board of Selectmen is currently working to obtain quotes on some of the work and should know more about the costs in a few weeks.

Walter Mitchell explained further that, in a case like this, there is a preliminary question whether things have changed. Addressing Mr. Evans, he stated that he had probably encountered that in other towns and heard it referenced under the case name, Fisher vs. Dover. If the Board finds that the application is for the same subdivision that was turned down in 2008 and that the road conditions have not changed since then, then he would recommend that the Board turn down the application for lack of jurisdiction. Mr. Mitchell clarified that his recommendation is that the application be denied "without prejudice" which would allow the applicant to resubmit once the road work is done.

Mr. Evans conferred with Mr. Rogers. Mr. Evans asked whether the application can be "tabled" until such time as the road work is complete and not have additional fees added. Mr. Mitchell recommended that the Board deny for lack of jurisdiction without prejudice which will allow the applicant to reapply. The board can agree to waive fees except for notification costs when the application is resubmitted after the road has been improved. He asked if that was acceptable to the board and the Board agreed. Mr. Rogers stated that he is concerned that the Board could change the regulations under which they are currently applying in the interim and make it more difficult to obtain approval.

Dan Sundquist moved that the Board deny the application without prejudice for lack of jurisdiction and with reassurance that the application can be resubmitted at such time as the road conditions have been brought up to the standard required by the approval of the three lot subdivision in the conditions of the approval and that the fees for the resubmittal be waived except the costs of notification. Julie McCarthy seconded the motion and it was unanimously approved.

There was a brief discussion about the issue of changing the town regulations. Dan addressed this stating that the issue remains that the condition of the road has not changed and has nothing to do with the subdivision and whether it is a minor or major subdivision. Mr. Evans then voiced his concern that the abutters would then attempt to have the road classified as a "scenic road". The chair reiterated that this is about the town's determination that road improvements are needed and required.

Dan Sundquist cautioned Mr. Evans that they are not in public session and further arguments in favor of the proposed subdivision are of no value and not appropriate and is a moot point.

Mr. Rogers asked about his escrow funds. Mr. Sundquist noted that the costs would far exceed the \$4,500 that he has in escrow. Further, all of the \$4,500 will be spent and is only a relatively small portion of the funds that will be used to complete the improvements.

Mr. Rogers asked how he will know that the improvements have been completed. Mr. Sundquist explained that he will be notified by the Select Board. It was suggested that he could contact Elly Phillips in about a month. Alternatively, the Select Board meeting minutes are published on the town website and he could access that for information. Dan offered that we could notify him when work begins. Mr. Rogers provided the LUC with his new address.

**Old Business:**

*Approved June 11, 2013*

**Minutes of previous meetings:** Carrie Thomas moved to approve the minutes from the meeting of April 9, 2013; it was voted unanimously.

**Board of Selectmen Report:** Dan Sundquist provided a "Select Board Report". He said that he and the board were talking about ways improve Birch Hill Road at the least amount of cost, including seeing how much work on trees PSNH is willing to do and what work the highway department can do and how much they will need to contract out. One important consideration is how to give the wing plows the space that they need to do their work.

He did mention that the turnaround at the foot of Park Ave is still an issue. They plan to meet there Saturday. The BOS need a certain open and level area for the snowplow turnaround. Dan gave some of the history on the plow turnaround and the LUC described the ZBA decision in which the town easement was a condition.

**Open Conditions Report:** The LUC stated that she will email the report now includes the requested subdivisions with conditions Harborview, the Falvey subdivision, and Meadowview.

**New Business:**

The LUC explained that she is working on a revision to the Planning Board Rules of Procedure. This was undertaken after Peter Blakeman visited her and offered some suggestions about hearing procedures. The Rules have not been revised since 1988. It was agreed that it would be useful to revise the Rules of Procedure.

There was some discussion about the need go out and seek people and speak with those who might be interested in joining the Planning Board.

Laurie Hayward, the Land Use Coordinator advised the Board that she would be out of town second week of May (5/8 - 5/14). The May 14 meeting is cancelled. This information is posted on the Planning Board page of the town website.

**There being no further business, the meeting was adjourned at 8: 00 PM.**

**Next meeting is to be held Tuesday May 28, 2013 at 7PM.**

Respectfully submitted,

Laurie Hayward  
Land Use Coordinator