

Approved November 24, 2015

TOWN OF SUTTON
Planning Board
Pillsbury Memorial Hall
Meeting Minutes
October 27, 2015

Present: Planning Board Members: Carrie Thomas, Chairperson; Julie McCarthy, Roger Wells, Peter Blakeman, and Carole O'Connell, Members; Dan Sundquist, Ex-Officio; and Jim Lowe, Alternate; (Bob DeFelice, Member, and Lisa Hogarty, Alternate, were absent); and Laurie Hayward, Land Use Coordinator (LUC).

The meeting was called to order at 7:11 PM, by Carrie Thomas, Chairperson.

Administrative:

Minutes of previous meetings: The Chair asked for a motion regarding the Minutes of the Meeting of October 13, 2015. The LUC offered that she had already made three very small corrections to the minutes. Lowe moved that the minutes as corrected be approved; McCarthy seconded the motion and it was voted unanimously.

Correspondence: The LUC explained that she was contacted by Brackett Scheffy, a local attorney. He told her that he is working for Dennis O'Connell on a request that an old Planning Board decision be overturned. The LUC had received a letter about this and mentioned it to the Board some time ago. On March 19, 2015, she replied to Mr. O'Connell who lives in Missouri by mail that the Planning Board would need letters from both parties requesting rescission of the Planning Board decisions, approved on January 24, 2012. In those decisions, there was a lot line adjustment done with O'Connell's neighbors the Wallaces and, separately, a subdivision was approved. O'Connell asks that everything be returned to the way it was before the Planning Board decisions to approve. The LUC told members that she told Scheffy that she was aware of Mr. O'Connell's request and had asked that letters be sent to the Planning Board by each party, Mr. O'Connell and the Wallaces. The letters should request rescission of the approvals for lot line adjustment and for subdivision.

Board Member, O'Connell asked if this is the same request that included asking for a retroactive refund of the portion taxes paid for the subdivided lots as opposed to the original single lot. The LUC confirmed that it is and that she informed O'Connell, the property owner, that there was no option for refunding taxes retroactively based on the rescission of a subdivision a few years after the fact.

Reports:

Sundquist, Select Board Report: Sundquist explained that the town property revaluation is in and total property value is down about 3%. He also stated that the tax rate will be up, in part because property values have gone down and town costs have increased, especially the school costs.

Sundquist told members that the tree, discussed at the previous meeting, that was taken down near Kezar Lake was removed with DES approval.

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The Chair asked Sundquist about the Jennifer and Scott Call barn. Sundquist said that the Calls have a year to resolve the issue of the badly deteriorated barn and they are currently working on selling the property to an abutter.

LUC, Open conditions: The LUC spoke about the Condition of Approval for the Minor Subdivision in which Bob Stewart was the applicant. She explained that the tree that was to be removed has not been removed. The LUC spoke with Stewart when he visited Town Hall recently. Stewart has emailed that he misunderstood that the tree removal was part of the Conditions of Approval for the subdivision and thought it was a condition of the driveway permit only. In the email he stated that he would contact the property owners and explain. He expects that the issue will be resolved within a month.

Work session:

The LUC spoke about the Zoning Board of Adjustment (ZBA) work session held the previous week. She explained that the ZBA members extensively discussed articles in the Zoning Ordinance draft revision that have been issues of concern for that board. These are items that were also discussed in a meeting with town counsel attended by Wells, of the Planning Board; Derek Lick, the Vice Chair of the ZBA; and the LUC. The LUC explained that her sense of the overarching issue is that the ZBA members questioned whether every item in the Zoning Ordinance shouldn't be something over which the ZBA has authority and which could be handled with an appeal to the ZBA for either a Variance or a Special Exception.

The LUC stated that town counsel explained that is not the case that every article in the Zoning Ordinance must be handled by the ZBA or that everything in the Zoning Ordinance be handled as either a Variance or a Special Exception. The LUC came away from the meeting with town counsel with the understanding that the Zoning Ordinance could provide authority for a variety of land use regulations that might be administered by other town organizations. In the cases specifically questioned regarding driveways and building on steep slopes, the Planning Board could resolve cases related to the Zoning Ordinance articles using Conditional Use Permits when appropriate. There is state statutory language that covers this approach as part of Innovative Land Use Controls [RSA 674:21]. With that clarification in mind, the ZBA is now working on language that places responsibility for inspecting excavations with the Code Enforcement Officer. The ZBA also approved language that places the administration of requests for permission to have a temporary travel trailer or construction trailer on a lot during the construction with the Select Board – logically, it comes up in connection to Building Permits which also fall under the administration of the Select Board. ZBA members now agree that it may be appropriate to have an article regarding driveways and an article regarding steep slopes in the Zoning Ordinance and they request that the Planning Board provide the exact language for their review and comment.

The LUC told Planning Board members that the question of how to word language regarding manufactured housing remains a point of contention. She said that the ZBA members are overwhelmingly against the Planning Board proposed language that would allow one manufactured home on one conforming lot. Members discussed their sense that permitting a manufactured home on a two acre lot if it is a newly created lot or something less, perhaps, on already existing non-conforming lots is far preferable to permitting many manufactured homes in a large park or subdivision

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and better meets the spirit of the state statute. There ensued a discussion of what options are available regarding Zoning Ordinance language. The ZBA prefers language that only allows larger manufactured home parks and subdivisions [10 manufactured homes or more in each case].

The issue is that the current language in the Ordinance regarding manufactured homes does not comply with state statutes; therefore, there really isn't an option to leave it as it currently reads in the Ordinance. There was a brief conversation about what is the state definition of "manufactured home". Members agreed that a "manufactured home" is, according to the state, a manufactured off-site dwelling that is on a chassis, essentially what has been previously known as a "mobile home". The state distinguishes a manufactured home from a "pre-site built" home. A "pre-site built" home is one that may come to a site in pieces to be erected on the site and does not have a built in chassis. In state statutes, a "pre-site built" home is treated the same as an on-site built house.

After some discussion, Planning Board members agreed that procedurally the only real options are for: 1) the Planning Board to agree with the ZBA language or the ZBA to agree to the Planning Board language and both boards to present a single draft language to the voters at a public hearing and then for town vote or 2) for the Planning Board to present their preferred language to the voters at a public hearing and then for town vote. The ZBA could, if they wished, make a citizens petition to present their preferred language as an alternative at town meeting. Wells noted that he would prefer the two land use boards agree. After further discussion it was agreed that the current sense of the Planning Board is that they are not in favor of the ZBA version and should continue with draft language to permit a single manufactured home on a single conforming lot as the best solution.

Wells briefly took up the Articles proposed on driveways and on steep slopes. He discussed what constitutes a steep slope. Blakeman pointed out that there should be a correction to remove the word "average". The grade at which something is a "steep slope" was agreed to be 20%. The board discussed the process for handling applications involving steep slope properties. The LUC offered that, in the conversations with town counsel on just this issue, he advised the use of Conditional Use Permits which the Planning Board handles as opposed to a Special Exception which the Zoning Board of Adjustment must approve. This resolves a concern of the ZBA members who do not feel qualified to address subdivision issues which involve more civil engineering questions and less interpretation of the Zoning Ordinance. Blakeman pointed out that, currently, the town does not even have an application for a Conditional Use Permit and has not used this in the past; but, agreed that from his point of view the use of a Conditional Use Permit is fine. Wells offered to draft language for a Conditional Use Permit. The LUC suggested that, when considering Conditional Use Permit language, the Board look at language already in the Zoning Ordinance Wetlands Overlay District Article providing for a Conditional Use Permit. It would be good to be consistent over both articles and create language that covers activities in either the Wetlands or the Steep Slopes Overlay District. Wells pointed out that it is not necessarily about preventing activities like the installation of a driveway; but, more about requiring that the best design be developed to mitigate future problems with drainage and access.

Wells stated that he agreed that there should be consistency throughout the Zoning Ordinance and where appropriate within the Subdivision Regulations. He suggested members keep that in mind when working with language about driveways, steep slopes, and, if appropriate, with critical soils. Wells moved on to state that, he can see how there could be lots in Sutton on which there is so much that is steep that there just is not enough room for there to be a house, a septic system, and a water source. In those cases, even though the lot was created prior to current zoning, the Board would have

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to deny a Conditional Use Permit and/or the applicant would only have recourse through an appeal to the Zoning Board of Adjustment.

The LUC pointed out that the article from the New Hampshire Municipal Association that she passed on to members about so-called “grandfathered” properties, makes clear that just because a non-conforming lot existed before current Ordinances does not mean that the property owner can ignore the current Ordinance. Wells pointed out that the “Five Year Exemption” [Subdivision Regulations, Section IV.H] that is already in the Regulations, says that, except in certain situations, a property has five years before a changed Subdivision Regulation takes effect for that property. Sundquist pointed out that there are just some lots that are not buildable, for example a lot that has slopes in excess of 30% in grade or a lot that is primarily wetlands. Sundquist offered that there are also lots that are challenging; but, with some innovative approaches could be buildable and in those cases it is appropriate that the Planning Board work to find that solution. Blakeman pointed out that the example that Sundquist gives is just the type of situation where the Conditional Use Permit applies and is useful.

The Chair reminded members that the plan for this evening includes work on the Subdivision Regulations. O’Connell added that she understood they would take up the language that members took home from the previous meeting to study before making decisions on what language was ready to be included in the draft and what language needs more work.

Board members then took up recommendations regarding changes to the first three Articles of the current regulations as proposed by Wells. There was extensive discussion as Members went through the first few articles of the draft revision of the Sutton Subdivision Regulations item by item and developed a series of changes to the first three Articles as well as to the Article - Definitions. Definitions have been moved from the end of the Regulations to the beginning. It was agreed that the LUC would make the changes to the draft revision of the Subdivision Regulations but not print new copies for the next meeting. Members would work with the current draft in their notebooks.

Members agreed to take home the recommendations that Wells made on what was Section IV [now Article V – Procedures]. The LUC handed out copies of the New Hampshire state statute, RSA 676:4, which covers Administration and Enforcement Procedures of the Planning Board for the members to refer to when working on Wells’ recommendations regarding procedures.

Currently there are no new applications. Next regular meeting is scheduled to be held on November 10, 2015 at 7:00 PM and will be a work session.

There being no further business, it was unanimously voted that the meeting be adjourned at 9:15 PM.

Respectfully submitted,

Laurie Hayward
Land Use Coordinator