

TOWN OF SUTTON
Planning Board
Pillsbury Memorial
Hall Meeting Minutes
February 10, 2015

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

The meeting was called to order at 7:05PM, by Carrie Thomas, Chairperson.

Administrative:

Minutes of previous meetings: The Chair asked for a motion regarding the minutes of previous meeting on January 13, 2015 amended to add the word "not" on page 3, second to last paragraph. O'Connell moved that the minutes be approved as amended. Sundquist seconded the motion and it was voted unanimously.

The Chair asked Alternate Jim Lowe to take Roger Wells place.

Old Business:

The LUC explained that she has now received the Mylar for the Rogers subdivision and it needs the Board Members to sign off on it before she can take the Mylar to the Merrimack County Registry of Deeds. The Chair explained to Lowe about the Rogers case and the exaction Rogers paid and the town improvements made to Birch Hill Road and the subsequent subdivision approval. Board members signed the Mylar. The LUC explained that she physically takes the mylars to the registry of deeds in Concord as it was recommended that Mylar's be personally delivered by a town employee.

Correspondence:

The LUC told members about an email from town counsel regarding the Feins Appeal and the need to have someone attend the hearing, scheduled for Monday, April 13, 2015, in order to be available to answer questions. Sundquist explained further that there is only a thirty minute time slot and the hearing is not about calling witnesses and it is not a jury trial. After some discussion about availability, it was agreed that Sundquist would go if town counsel thought that was a good choice; if not, the LUC would attend. It was agreed that the LUC would request the opinion of town counsel. There was a brief discussion about the fact that, regardless of the outcome on this, it seems there is still the issue of approval by the New London Planning Board which is involved because sole access to the property is via a New London road.

The LUC explained to the Board that she has had phone conversations and then a visit from an attorney representing Verizon regarding an application for co-location on the Shadow Hill Tower. The LUC expects that she will have the application in hand by the 15th in the hope that the public hearing could be held during the first meeting in March. The LUC went on to explain that the first meeting in March is an issue because that is Town Vote day and Pillsbury Memorial Hall is not available that day. She explained that she had polled members about a replacement date and could not find a date that worked for more than one or two members.

The LUC asked the Chair if she wanted the LUC to notify the applicant that the earliest the public hearing could be held is March 24, 2015. The Chair asked if there were enough members who could meet on the 10th. The LUC replied that she believed they could have a quorum on the 10th; but, no hall. The LUC explained further that she felt that changing the location and then holding a public hearing on a cell tower just didn't feel like the right thing to do. Sundquist agreed, stating that the hearing really should be held at town hall. Sundquist added that Wally Baker was his Select Board stand-in and they could invite him to act as Ex-Officio in Dan's place. It was pointed out that the Board often does not meet in early March because of the issue with Town Vote. Sundquist pointed out that

the Board is only required to meet once a month. There was a discussion about places where the Board might meet. O'Connell suggested the Cressey house which is owned by the Historical Society. O'Connell pointed out that the Cressey house is probably not a good location for a public hearing. It was finally agreed that the Board would make March 10, 2015 a work session and meet at the Cressey House. The last meeting in March, on the 24th, would include the public hearing on the Verizon Co-location and be held at Pillsbury Memorial Hall. The LUC agreed to let the applicant know.

Reports:

The Chair asked if there were any reports. The LUC stated that there were no significant changes to the Open Conditions Report and that is not unusual during the winter months when there is no construction under way.

Capital Improvement Program:

The LUC told Board members that she did do a lot of work with Steve Bagley, Sutton's Road Agent, on the Capital Improvement Program (CIP). She further explained that Bagley had provided information on replacement costs and timing. The LUC took Bagley's data and created a spreadsheet that had much more detailed information on replacement costs, useful life, and estimated year of replacement, than was available before this work was done. This will be a very useful start when the CIP is taken up as part of the work on the Master Plan. When asked why the town has a CIP, the LUC replied that Capital Reserves are a way to put money aside for future costs and doing so helps keep property taxes more level by paying in advance and over time for known expenses.

Sundquist asked if the Budget this year covers the equipment at 100%. The LUC replied that the Budget Committee did not approve the Capital Reserves for Highway Equipment at 100% of the recommended amount. The Budget Committee did, however, support an increase from about 50% of the recommended Capital Reserve amount to 75% which is an improvement over recent funding levels. The LUC said this increase, although not quite as much as she had proposed, is a good start on getting closer to fully funding the reserves needed for replacement of equipment.

Lowe asked if full funding didn't lead to a tendency to higher equipment costs. The LUC said that the thought is that having the money available allowed the Road Agent to determine when equipment age and repair costs eat up any benefit from holding on to the equipment including reducing any residual from resale of equipment.

Sundquist pointed out that the residual value is not high; but, sometimes the equipment is sold to contractors or other individuals. Sundquist explained for the benefit of the new alternate, Lowe, that the CIP is the responsibility of the Planning Board and that the LUC has taken the lead in putting numbers together. Sundquist also explained that it is not just highway; but, everything that the town is holding capital reserves on or that will require a significant outlay in the future that should be included in the CIP. Sundquist added that they are planning to do a Road Condition Analysis over the coming year. Sundquist said that the town's roads are, in many cases, "in dire need". Sundquist said that the town will need to fund a program to work on the roads over a rolling five-year span. He also noted that the town is currently also dealing with bridge repair issues as well, including at least one "red-list" bridge. There was a brief discussion about the issues that cause bridge/culvert failure, including that many steel culverts have performed very poorly in the highly acidic waters here in Sutton.

The Chair asked if anyone knew anything about the apparent issues at the point where the Lane River comes out of Kezar Lake. Sundquist said that the problem is with beavers building a dam in the area. There was a discussion about beaver issues around Kezar Lake and whether a Beaver Deceiver [a piece of equipment used in other towns to act as a deterrent to beaver dam building efforts] would be useful in this case. Sundquist offered to contact the Conservation Commission and discuss whether there might be an opportunity for Sutton to act as a "demo project" of this equipment at that location.

Master Plan:

[Prior to calling the meeting to order, the Chair asked the LUC whether she had been contacted by Heidi Thoma

regarding the Master Plan. The LUC said that she had not. The Chair stated that she will explain Thoma's involvement with the Master Plan when they take up that item. There was general agreement among Board members that Thoma has done a lot for the town and especially the library and would be an excellent person to have involved in the Master Plan.]

The Chair asked whether there was anything further regarding Roger Wells suggestions regarding the Master Plan advertising. The LUC stated that she did receive information on costs to advertise in the InterTown Record from Kirsten Kraushaar. The cost for the suggested four page "pull-out" section would be roughly \$1,200 and that amount is not included in this year's budget. Sundquist asked for clarification on the \$1,200 cost and whether that included articles.

The LUC explained that there are two different things being discussed. One is the series of articles which do not cost the town anything and which Kraushaar has offered to edit. The other item, the four page pull out is advertising which does have a cost. The LUC did say that her sense was that this advertisement would fall late in the master plan process, at the end as part of the town approval process, and that means it could be included in the 2016 budget. The LUC also reminded Board members that the budget for 2015 includes additional money to pay for the work to be done by Central regional Planning in connection with the Master Plan and over the two years 2015 and 2016, the total budgeted for their efforts is \$6,500. O'Connell asked the LUC about the costs for the postcard that was sent out regarding the community-wide survey. The LUC explained that they did the post card "in house" to keep costs down and the costs for materials and postage was, maybe, \$350. O'Connell stated that she would be more in favor of something like the postcard mailing as they would be mailing to a target audience, only the people in Sutton, rather than paying to reach all the towns covered by the InterTown and not only those who read the InterTown, but all residents. The Chair suggested that flyers could be placed around town, at the library, the town hall, the post offices and other places where people can simply pick it up.

The Chair explained that Thoma would be involved in marketing the Master Plan and has already made suggestions about ways to generate interest at this year's town meeting, including using easels with pads of paper and ask people passing by to write notes pro and con issues under the broad Master Plan chapters.

The chair said this could incorporate the effort to get more people signed up to work on the Master Plan. O'Connell offered to help Thoma with the marketing for the Master Plan.

Sundquist addressed the process. He explained that once the Master Plan is drafted, there is a hearing. But, the Master Plan does not have to go to Town Meeting before it is adopted. After public hearing and input, the Planning Board may adopt or amend the Master Plan and no additional action is required. Sundquist stated that he thinks the process has the highest importance. O'Connell added that it is, at this point, just getting volunteers for the committees has the highest priority.

[Thomas Schaumberg left the meeting at this point.]

The LUC asked Lowe whether he uses the internet. Lowe replied that he did. The LUC said that she would send him links to documents that he might find useful like the Zoning Ordinance, the Subdivision and Site Plan Regulations as well as the 2005 Master Plan, and links to minutes and agendas. The LUC suggested that Lowe call her if he had any questions about the files or the links.

The Chair then took up another Wells suggestion for a series of articles to appear in the InterTown. In these articles, subjects that relate to the Master Plan would be discussed from two opposing points of view. The Board liked the idea of choosing two Sutton historical figures and letting the discussions get a bit lively pro and con.

Sundquist asked the Chair if the idea was to make Thoma the editor of the articles for the InterTown. The Chair responded that she spoke with Thoma and Thoma was excited and interested in the articles and had volunteered to

write one or more of the articles. The Chair explained that Yvonne Howard would also be interested in writing one of the articles. The Chair also explained that the Town Meeting seemed like a very useful opportunity to generate interest in the various topics and maybe get some people to sign up for committees. O'Connell agreed and said that she would be there to take names. O'Connell told members that she did check with Jack Noon [the town historian] about possible Sutton historical figures to use as "debaters" in the articles and he had no suggestions but was definitely against the idea of using Matthew Harvey and Bob Bristol. It was agreed that perhaps they would not use historical figures.

The Chair reiterated that it was not likely they would do \$1200 of advertising; but, they would look for ways to get the word out at a lesser cost.

There was a brief discussion about Kirsten Kraushaar's offer to help shepherd articles through and even write one if the Board would like. O'Connell suggested that once the articles are ready, perhaps Judy Lowe can write something in her Sutton column to let people know what is coming in the InterTown. The suggestion that anything that appears in the InterTown should also be noted on the Planning Board [Master Plan website] and perhaps copies kept available at town hall were discussed briefly.

Old Business:

The Chair opened a discussion about driveway regulations. The LUC explained that, as requested, she spoke with Peter Blakeman about the Wells proposed revision to the driveway regulations. Blakeman's response was that the language proposed was good for New London, but not for Sutton, and was much too complex. O'Connell said that she agreed with Blakeman's assessment. The LUC added that she does not think the citations for "authority" for the Planning Board to take up the revision of town driveway ordinance are necessary or even provide the Planning Board with that authority. Instead, "the authority" comes from RSA 236:13 and, perhaps, 236:14. Sundquist disagreed, stating that although the planning board is not given responsibility by the cited statutes, the statutes do pertain to sections of the ordinance- for example fire codes.

The LUC then explained that she also felt that the proposed regulations were a bit cumbersome. She believes that there should be complete consistency between the town driveway articles in the town subdivision and the site plan review regulations pertaining to driveways and those to the town driveway ordinance and application. To that extend she recommended the language be the same in all three instances. She told members that, as an example, she combined the different sections in the current regulations that pertain to driveways into one article and recommends incorporating that one article as part of all three documents. That would also help in preventing confusion about what regulations exist by consolidating language a single heading in the regulations.

[Members had copies of the current driveway ordinance in their packets.] The LUC stated that she did not think the current ordinance language was so very bad. Sundquist stated that he feels the language does not provide what the town needs. The Chair asked if the Planning Board has authority over the town driveway ordinance. She added that she feels the Planning Board can make suggestions but they cannot do more than that. The LUC stated that they are given the authority under New Hampshire statutes as explained earlier by RSA 236:13 [copies included in packets]. O'Connell noted that some of the items in the ordinance do not seem to be covered, for example "steep grades". The LUC said that her reading of the current regulations is that the regulations do allow the Planning Board to make a determination of, for example, the safety of a proposed driveway, the location and the potential impact. The LUC stated that is supported by RSA 674. Sundquist stated that he feels the New London ordinance/regulation reaches beyond their authority, specifically in their treatment of what is too "steep" and driveway grade driveways on private property? The Chair also asked about width. The LUC agreed to ask this of her New London contact.

The LUC said that she suspects the Board has more authority than it thinks and she will do some research on that and let members know the result of the research. Sundquist summarized his concern regarding regulating "private

driveways on private property” and how he does not know how New London looks at it but suspects it would not work well here. The LUC suggested that the current regulations indicate that the then Board thought they had some authority beyond regulating only the entrance at the road. The LUC promised to do some research on RSA’s and the Board’s authority on driveways. Sundquist gave a bit of the history of issues that were addressed in the current regulations and how they were there to address ice and water damage to roads as a consequence of driveways. Sundquist stated that his memory is that the guidance the then Board had on this was that they had to limit their regulations to only a small area around where the driveway intersects the road. Sundquist said that the reason they are discussing this is that with very steep roads there exist questions about emergency vehicle access. He added that, if the Board does not have the authority, then the Board will have to step back. Their discussion continued as Sundquist explained to the alternate a bit more about the lengthy history. O’Connell suggested that they also question whether the town can limit the number of properties on a common driveway. There was a question whether it makes sense that something is treated one way if it is called a “driveway” and another if it is called a “road”. Members agreed these are complex issues. The LUC explained that the current regulations state under the heading “Road and Circulation Plan”, the last section, that there will be no more than two properties served by one driveway. She added that part of the problem with members suggesting there was nothing about common driveways in the regulations is that some of the regulations about driveways were included in other sections than “Driveway Standards” and she strongly recommends that not be done in any revision. The LUC also read from the current Sutton subdivision regulations under VII.C. 22. Construction of Roads-

“Driveways: Each lot in a proposed subdivision shall be served by a driveway which conforms to the standards specified in these regulations. Location of driveways is intended to prove that there is at least one location for each lot that can meet the requirements, especially for traffic safety, before all opportunity for lot line change is foreclosed by the Boards approval of the Plat. These driveway regulations apply on both private and public streets.”

The LUC explained that she drafted the re-write to include these in a single Article. O’Connell suggested that the LUC get the draft included in packet out to everyone in an email. Sundquist stated that first the Board needs to be more clear on where they have authority and where they don’t. The LUC did read the “authority” section, RSA 236.13.V.

“V. The same powers concerning highways under their jurisdiction as are conferred upon the commissioner of transportation by paragraphs I, II, III and IV shall be conferred upon the planning board in cities and towns in which the planning board has been granted the power to regulate the subdivision of land as provided in RSA 674:35, and they shall adopt such regulations as are necessary to carry out the provisions of this section. Such regulations may delegate administrative duties, including actual issuance of permits, to a highway agent, board of selectmen, or other qualified official or body. Such regulations, or any permit issued under them, may contain provisions governing the breach, removal, and reconstruction of stone walls or fences within, or at the boundary of, the public right of way, and any landowner or landowner’s agent altering a boundary in accordance with such provisions shall be deemed to be acting under a mutual agreement with the city or town pursuant to RSA 472:6, II(a).”

The conversation on authority continued. The LUC read RSA 236.13.VI.

“VI. The commissioner of transportation or planning board shall retain continuing jurisdiction over the adequacy and safety of every existing driveway, entrance, exit, and approach to a highway, whether or not such access was constructed or installed pursuant to a permit under this section, and, unless the access is a public highway, the owners of property to which the access is appurtenant shall have continuing responsibility for the adequacy of the access and any grades, culverts, or other structures pertaining to such access, whether or not located within the public right of way. If any such access is or becomes a potential threat to the integrity of the highway or its surface, ditches, embankments, bridges, or other structures, or a hazard to the safety of the traveling public, by reason of siltation, flooding, erosion, frost action, vegetative growth, improper grade, or the failure of any culvert, traffic control device, drainage structure, or any other feature, the commissioner of transportation or planning board or their designee may issue an order to the landowner or other party responsible for such access to repair or remove such hazardous condition and to obtain any and all permits required therefor. The order shall describe the hazard, prescribe what corrective action or alteration in the location or configuration of such access shall be required, and set a reasonable time within which the action shall be completed. Such an order shall be sent by certified mail, and shall be enforceable to the same extent

as a permit issued under this section. If the order is not complied with within the time prescribed, the commissioner or planning board or their designee may cause to be taken whatever action is necessary to protect the highway and the traveling public, and the owner or other responsible party shall be civilly liable to the state or municipality for its costs in taking such action.”

It was reiterated that the LUC should do more research on both authority and limits to authority. The Chair asked if the LUC had contacted town counsel about this question. The LUC said she had not. The Board agreed that in this case, it would be useful for the LUC to ask the question specifically of town counsel regarding private driveways on private property. The LUC cited current regulations, asking if the suggestion is that the current regulations, which include a section requiring a 12 foot minimum width and one on driveway grade, are beyond the Board’s authority and should be removed. Sundquist reiterated that his understanding is that the Board does not have authority beyond the entrance and the right of way. The conversation continued, including that the current language includes requirements for culverts, water bars, and ditches. The LUC explained that some of the town current regulations on driveways are the same language as that recommended in the old Office of Energy and Planning recommendations. In the draft the LUC did some of that language was revised to be consistent with the new 2014 recommendations. She noted that use of OEP language is even more so the case with the draft recommendations connected to the proposed minor subdivision language.

O’Connell noted that there are some things listed under RSA674:36.IV. that the town is not allowed to do such as require sprinklers. Some things are allowed: “Nothing in this paragraph shall prohibit a duly adopted regulation mandating a cistern, dry hydrant, fire pond or other credible water source”. Board members confirmed that the LUC should seek advice from town counsel. Sundquist added that a key question revolves around where does the town responsibility for safety begin and end and what are the implications for regulations, ordinances and how that relates to internal [inside private property] things like driveways especially in subdivisions. O’Connell added that there is language in the statutes regarding “off-site roads”. She asked what that would be and whether it is intended to cover driveways.

The Chair asked if the Board wanted to continue at this point. The LUC asked if she could explain what some of the material in the packets. The LUC told Board members that she had included copies of the Section on the Four-year Exemption in the current regulations as Section “H” which was changed by the New Hampshire legislature and is now the Five-year Exemption. The packet includes the old language and the new language. The LUC suggested that this is a revision that the Board can and should make as it simply makes town regulations consistent with state statute. There was a very brief discussion about what the new wording means. The LUC explained that she had also drafted another take on minor subdivisions which is a bit different from Wells. She came to this by reading the current regulation definition of “Minor Subdivision”. Sundquist suggested that this is “on dangerous territory”. The LUC explained that she found some of the support for this in the OEP Handbook. There was some additional discussion and it was clear that Board members were not comfortable that this approach works for Sutton.

Next regular meeting is scheduled to be held on February 24, 2015 at 7:00 PM. Next public hearing is scheduled for March 24, 2015.

There being no further business, it was unanimously voted that the meeting be adjourned at 9:07 PM.

Respectfully submitted,

Laurie Hayward
Land Use Coordinator