

TOWN OF SUTTON
Zoning Board of Adjustment
Pillsbury Memorial Hall
Meeting Minutes
September 17, 2014

Present: Zoning Board of Adjustment Members: Bill Hallahan, Chair; Derek Lick, Member; and alternate, Sue Reel (Dane Headley, Doug Sweet, and Ed Canane, Members; and Carla Krajewski, alternate, were absent); and Laurie Hayward, Land Use Coordinator.

The meeting was called to order at 7:02 PM, by Bill Hallahan, Chair.

The Chair asked for a roll call. The LUC took the roll call and Hallahan, Lick and Reel duly responded.

Administrative:

Minutes from the last meeting: The Chair asked that the minutes of the meeting of July 16, 2014 be until the next meeting.

Work Session: Revision of Zoning Ordinance- Lick handed out copies of the Zoning Ordinance which included a number of formatting and minor changes to wording. Lick explained that this was the ordinance language that the LUC had emailed to him and most of the recommended changes; maybe 90% were "little nits". The items of substance were: 1.) The Excavation Section in the General Provisions section where he questioned if the wording really says what is meant and corrected it and 2.) That he did add the noise ordinance that he understood Chief Korbet wanted. There was a brief discussion between Lick and the LUC regarding RSA citations and whether they are more helpful or not.

Lick explained that, although he included new noise ordinance language, he was not comfortable that it belongs in the Zoning Ordinance. Lick gave a series of reasons that he does not feel the noise ordinance entirely fits the zoning ordinance. After some additional discussion, Lick stated that he feels this doesn't belong in the Zoning Ordinance and if it did he would be concerned about the complexity, including the layers of times and days and levels of noise. Lick expressed some concerns about the language used to cover enforcement and fines. After a bit more discussion, Hallahan stated that he strongly feels this does not have much to do with land use and does not belong in the zoning ordinance. Lick explained that he suspects that this could be best handled by petition either from the police chief or by a citizen's petition. Lick said that he feels we should ask town counsel how this should be approached and what the process is. Hallahan noted that any changes to the Ordinance would have to go before the voters. The LUC noted that before the voters get it, she runs it past town counsel. Lick explained that in New Hampshire, certain bodies have responsibility for certain types of ordinances or other statutes and, unless the legislature has specifically assigned that responsibility to the town, the town cannot do it. Hallahan asked what would happen today if there was an issue regarding noise – is there a situation where a noise issue might come before the Zoning Board of Adjustment? Lick replied that he could imagine how something could come before the ZBA in a case of noise where the appeal was about the "nuisance provision" in the General Provisions section was cited as it covers noise along with other things like "odor" and "dust".

Lick ended with the suggestion that the LUC check with town counsel and depending on the answer email Chief Korbet the recommended course of action in order to get his suggested ordinances before the voters. Lick also suggested that the LUC ask town counsel to provide the RSA citations that cover the towns' ability to legislate the specific areas being considered for new ordinances just to make sure the town does have the authority.

Hallahan asked Lick if he saw anything else of significance to concern the Land Use boards in Lick's review of the Ordinance. Lick said that for the most part it was very small stuff. Lick said his overall impression is that the area the Board should concentrate on is in the definitions. Lick cited an example of a section that he felt needed to be

examined and possibly revised, Article III.C., which begins “Junk yards” and ends with “in accordance with the standards set and enforced by the New Hampshire Revised Statutes Annotated.” The LUC stated that she had recently had to do some research on “junkyards” and spent some time trying to find the land use citation to support the Section. Eventually she found the RSA being cited. It was not a Land Use statute; but rather was a Motor Vehicle statute. The LUC explained that was why she preferred in a number of circumstances to add the statute RSA number to assist anyone who wanted to better understand what is required.

Lick went on to give examples of wording where he was concerned that there might be inconsistencies in usage throughout the Zoning Ordinance. After examining a few of those instances, it was agreed that the LUC should go through the Ordinances in advance of the next meeting and put together a list of definitions given throughout the Ordinance and the places where those words are used in context so that the Board can determine whether work needs to be done to ensure that definitions and usage produce appropriate and consistent statutes. The LUC asked if they wanted her to include definitions and usage from the Subdivision and Site Plan Regulations as well to at least see if words are used in the same manner by both Planning and Zoning. It was agreed that might be useful. In discussing definitions, Lick offered the example of the definitions of “structure”, “principle building”, and “residential dwelling”. It was noted that a “structure” encompasses all buildings as well as other things like flag poles and fences; “buildings” are structures covered by a roof; and “dwellings” are buildings which have kitchens, baths and sleeping places. It is important to make sure that the words “structure”, “building”, and “dwelling” are used correctly and consistently throughout. Additionally, it is important that there be clear definitions for words and phrases that are important to a clear understanding of the statute and include references to definitions within the definitions if it helps the reader find a definition. The Chair stated that he has looked at other towns’ ordinances and finds that they all seem to use different definitions, some quite complicated and some used inconsistently.

Lick suggested that a first step might be to simply go down the list of definitions and look at every use within the Ordinance to determine where the word appears and what is the context in which it is used and are there differences in usage within the Ordinance. There was a brief discussion about possible changes and about issues that have turned up in the course of cases involving, for example, two-family homes, manufactured homes, and junkyards. It was agreed that the LUC would develop the list of current definitions and uses and also look at definitions in the Regulations.

Open Conditions: The LUC had provided copies of the most recent Open Condition Report. The LUC explained to members that there had been progress on the ITW, Moulton Landscaping and Mapes cases, although none of the conditions on those were complete. The Cahir asked about the Merrimack Telephone (TDS) Open Condition. The LUC explained that she had relayed the information about local landscaping companies and that the ZBA was OK with using arbor vitae for the screening. She also stated that her contact had said the plantings would happen, presumably in August. The Chair confirmed that there had been no planting. There was instead a mowing which did remove weeds but left the equipment even more visible. **After a brief discussion, the Chair moved to recommend that the BOS send a Cease and Desist letter to TDS. Lick seconded the motion and it was approved unanimously.** Lick suggested that the letter be sent register mail to the Registered Agent (using the address from the state Secretary of State website.

Next meeting is to be held Wednesday, October 15, 2014 at 7pm.

There being no further business, Hallahan moved and Lick seconded, and it was voted unanimously that the meeting be adjourned at 8:15 PM.

Respectfully submitted,

Laurie Hayward
Land Use Coordinator