

**TOWN OF SUTTON**  
**Zoning Board of Adjustment**  
Pillsbury Memorial Hall  
Meeting Minutes  
April 15, 2015

**Present:** Zoning Board of Adjustment Members: Bill Hallahan, Chair; Doug Sweet, Ed Canane, Dane Headley, and Derek Lick, Members; Sue Reel, Alternate; Laurie Hayward, Land Use Coordinator; and Henry Howell, who is on the Sutton Conservation Commission, and Thomas Schaumberg, interested parties.

**The meeting was called to order** at 7:13 PM, by Bill Hallahan, Chair.

The Chair asked the LUC to take roll call. Hallahan, Sweet, Canane, Headley and Reel all answered. [Lick arrived after the roll call.]

**Administrative:**

**Minutes from the last meeting:** The Chair asked that the minutes of the most recent meeting [February 25, 2015] be approved. Canane moved that the minutes be approved and Headley seconded and it was voted to approve the minutes.

**Nomination and vote for members and officers:** The Chair asked Canane whether he had signed up for another three years and been sworn in. Canane replied that he had. Hallahan noted that they are glad to have Canane back and thanked him for his contributions. The Chair told members that the Board does need another Alternate. He suggested that if anyone can think of someone who would be willing be an alternate member; they should let the Board know so that person could be considered for the position.

**The Chair opened the nomination of Board Officers for the year 2015.** Hallahan explained that, now that the Town Meeting has been held, it is time for the Zoning Board of Adjustment to vote for a new Chair. **Canane stated that he nominates Hallahan to remain as Chair.** Hallahan asked for any other nominations. There was complete agreement amongst members that they would like to re-nominate Hallahan and had no other suggestions.

**Member Derek Lick joined the meeting at this point.**

Lick was asked whether he had any other nomination to make and Lick replied that he did not. **Hallahan moved to close the nominations for Chairman of the Zoning Board of Adjustment; Headley seconded and it was voted unanimously that Hallahan continue as Chairman of the Zoning Board of Adjustment.**

**The Chair opened the nomination of a Vice Chairman for the year 2015.** Hallahan nominated Lick to be Vice Chair; Headley seconded, Lick abstained. **The vote was four in favor and one abstention. Derek Lick is voted Vice Chairman of the Zoning Board of Adjustment.**

**Correspondence:** The Chair asked the LUC if she had anything in the way of correspondence. The LUC said that there was none. The Chair asked the LUC if there were any new applications. The LUC explained that today is the 15<sup>th</sup> of the month, which is the deadline for applications to be heard the next month and there have been no new applications.

The Chair explained that he does have two items that are zoning related: 1) there is a problem with signage on the Carlson property which is located on Route 114 and 2) there is an issue regarding Merrimack County Telephone Company and the unsatisfactory job that they did on the landscaping at Route 114 across from Blaisdell Lake. The Chair told members that on each of these issues, he has spoken with the Town Administrator about having her send a letter asking the problem be corrected. He read wording that he had drafted for the letter to Merrimack County Telephone Company as follows: "You were granted a variance from the Sutton ZBA with conditions. As of this date you have not complied with repeated requests from the Sutton Land Use Coordinator. We expect that you will comply with all conditions by May 30, 2015 or we will review your variance and take appropriated action."

The Land Use Coordinator expressed her concern that this did not reflect that Merrimack County Telephone Company did, in fact, make an effort to comply. She reminded members that, although she did have a great deal of difficulty getting a response and then getting some action, eventually she received a reply and a request that the ZBA tell them whether the planting of a few arbor vitae as a screen for their equipment would be adequate. She asked the Board in a meeting whether the planting of arbor vitae would be adequate and told her contact that was fine with the Board. From her point of view the wording should include that TDS both responded and acted; but, the inadequacy of the planting is the issue. Doug Sweet said that his understanding was that the screen was to benefit abutters and that the current planting was only along Route 114 and so does not meet that goal. There was a brief discussion among members about how poorly the shrubs were planted and how inadequate they are as a screen for abutters. Canane added that it is important that communications with TDS make it clear what the purpose is. Lick agreed saying the bottom line is that the installation has to be screened. It was agreed that the LUC would work on a revision and call the Chair to review the revised letter.

**Work Session: Revision of Zoning Ordinance**

**Hallahan draft language for Solar Ordinance:** The Chair opened the work session on the Zoning Ordinance. He introduced Henry Howell who is a member of the Sutton Conservation Commission. The Chair invited Howell to speak to the group on the subject of solar. Howell explained that he is interested in solar from both a personal point of view and through his work with the conservation commission from the point of view of its impact on the town as well. He has been researching this and has looked at different ways to mount solar panels and the different costs associated. He is still educating himself and has not made a final decision on the best way to go for his own installation.

The Chair told Howell that the ZBA is just beginning to work on possible Zoning Ordinance language for solar and has not yet come to any conclusions. Headley pointed out that at the last meeting members seemed inclined to simply require a building permit for roof-top installations. Canane supported Headley's comment saying he really didn't think roof-top installation presented any problem and didn't think there was any reason to zone for them. Canane did say that he does have an issue with so-called "solar farms". Canane questioned whether there needed to be anything in the Ordinance about solar. The LUC explained that it is her impression that they do want language, even for roof-top installations, because they can make it clearer and even quicker for Sutton residents to get approval if they state in the Ordinance what is permitted and what the process is and what requires ZBA approval. The Chair read the draft language that he had prepared as a basis for discussion regarding a new Ordinance article on solar installations.

**"ARTICLE XIII, Residential Rooftop Solar PV Facilities**

**A. Purpose & Intent:**

1. It is the express purpose of this article to permit residents to locate Solar PV Systems in the town of Sutton consistent with appropriate land use regulations that will ensure compatibility with the visual and environmental features of the town.

2. Sutton allows this type of renewable energy system to be installed on existing residential structures throughout the community, providing that a building permit is granted.
3. When a Solar PV System is to be installed on the ground of a residential property adjacent to an existing structure, or on a proposed structure, setbacks and other zoning related requirements must be considered.

B. Definitions:

Historical District

Residential Rooftop Solar PV

Solar PV System

C. Applicability:

1. The terms of this Article and the Site Plan Review Regulations shall apply to all Solar PV Systems to be located on all property in the Town of Sutton.
2. The Zoning Board of Adjustment shall specify that content and timing of application materials to be submitted by the applicant for a Special Exception.

D. Location Requirement:

1. Solar PV Systems shall be permitted in all Zoning Districts as a Special Exception provided conformance with these standards and the other provisions of the Sutton Zoning Ordinance can be met and approved by the Board of Adjustment.

E. Use Regulations:

1. A Residential Rooftop Solar PV shall require a Building Permit in all cases for existing structures.
2. For a newly constructed building a full Site Plan Review by the Planning Board is required.
3. Any Rooftop Solar PV located within a historical district or on a historical building or structure, shall not alter the character, defining features, distinctive construction methods, or original historic materials of the building.

F. Permits:"

Canane asked Howell what he, as a member of the Conservation Commission, considers to be the biggest issue regarding solar installations. Howell stated that he would like to have something that specifically addresses installation of racks. He also indicated that there is a concern about commercial use of solar. The Chair replied that the Board is not looking at "commercial" installations at this point. [There currently is no commercial zoning in Sutton; therefore, any commercial effort would automatically come before both Planning and Zoning Boards.] The Chair stated that he understands that there may be some types of installation that must be considered for stronger zoning language than his first draft contains and that language is something the Board must work on going forward.

Canane discussed the problems he has with large, commercial ground-mounted solar installations. He further explained that he knows that the Rural Development arm of the US Department of Agriculture is providing grants worth 80% of the cost in an effort to heavily support alternative energy source installations. Canane reiterated that he supports smaller individual installations and feels an Ordinance requiring a Special Exception is needed for larger installations. Canane expressed to members that he would be very happy to see the town allow ground-mounted solar installations on conservation land, he used land around Russell Pond as an example. Canane added that he feels the Board really needs some professional assistance in crafting an ordinance to cover solar installations. Canane offered to see if he can find someone to provide that assistance and report back at the next meeting.

The Chair reminded that LUC that it would be useful to know more about the New London approval of the ground-mounted installation in New London. The Chair wants to know what the basis was for that approval. The LUC did tell members that, at the time of that installation, there was nothing in the New London Zoning Ordinance regarding solar installations and said that she would ask her contact in New London.

Sweet asked what the current process is if someone comes in and wants to put solar panels on their roof. The Chair replied that they are simply required to get a building permit. Howell told Board members that the

Conservation Commission supports alternative energy sources; but, they are concerned that panels on racks be carefully reviewed for their impact including aesthetic and environmental effects. The Chair pointed out that when the first application for a cell tower came, they were unprepared and there were no ordinances in place and that worked to the town's detriment. With a likelihood that solar will grow significantly in the near future, it would be good to be prepared.

The Chair asked Howell if he could provide contact information on solar organizations. Howell said that Andover, Wilmot, and New London had done some work together to bring solar to the area. Tom Schaumberg added that Larry Chase of Andover and Bill Spear of New London might be able to provide them with useful information. Hallahan asked Howell, as he continues his research, to pass on any ideas on to the LUC.

Lick spoke saying there seem to be two routes to solar that must each be considered: 1. Solar on a structure requires a building permit and 2. Ground mounted solar installations require some kind of review and perhaps a Special Exception. Therefore, they might consider language that simply says if it is a roof-top structure for personal use only, there is no requirement other than a building permit. For anything other than that, there might need to be a review requirement. Lick also said that the Board might consider specific language for solar installations, including roof-top, in a Historic district. Lick pointed out that the Board must start with the question, "do we care?" and, if so, "in what situations do we care?" The Chair asked members to give it some thought and keep a list of questions for consideration in the next meeting.

#### **Henry Howell left the meeting at this point.**

The Chair asked the LUC to speak about other possible changes to the Zoning Ordinance.

**Cell tower co-location (change to RSA 12-K):** Before the meeting was opened, Headley asked the LUC about the Planning Board applications of two wireless carriers to co-locate on two different Sutton cell towers. The LUC explained that the two Planning Board so-called "Limited Site Plan Reviews" did not happen. She discovered that there was a change in RSA 12-K that precluded any Site Plan Review for PWSF Co-locations that do not significantly change the tower height or compound size. The LUC stated that after checking with both New Hampshire Municipal Association Legal Services and town counsel, it was determined that the Planning Board Public Hearing must be cancelled and applicants were told and instructed that they could simply apply for a Building Permit. Headley asked where the applications stand "now". The LUC told members that both applicants, T-Mobile, Co-locating on King Ridge, and Verizon, Co-locating on Shadow Hill, did submit applications for building permits and both received those building permits and may by now have completed the installation of equipment on the cell towers. The LUC explained that is part of the reason that the PWSF Co-location language in the Zoning Ordinance is a subject on the agenda for this meeting. The Board Members briefly discussed the issue and it was agreed that they should read the language in RSA 12-K and decide for a future discussion whether they were in favor of using language directly from the RSA or creating their own.

**Other possible Ordinance changes:** There was some discussion about other possible changes in the ordinance. Members went over a few definitions, including Manufactured Housing. Regarding Manufactured Housing Board members agreed that no further changes were needed on that definition.

The LUC explained that after the last meeting she did check with town counsel regarding that application to the Zoning Ordinance of a change in the length of time needed for so-called "substantial completion" which allows for two years rather than the previous limit of one year. Town counsel clarified that it is only in the context of a

Variance or Special Exception which involve completion or “substantial completion” within one year that they need to make a change. For the language in the “General Provisions” section regarding replacement of fire damaged structures and the one regarding travel trailers, for example, they could continue to limit permission to one year. Members discussed where uses of a one year limit should be changed and which probably should not. Lick pointed out that there are a couple of places that the Board has the option of changing or not, like the “travel trailer” language.

The LUC briefly discussed some definitions that did not seem to be attached to anything in the Ordinance- for example, “Building Area” is defined and she could not find any mention of “Building Area” in the Ordinance. Similarly, “Community Facilities is defined, but not mentioned in the Ordinance. The LUC suggested that members might want to drop a few definitions. Sweet pointed out that one of the definitions thought to have no reference, “personal noncommercial sawmills” is used in Article V.A.4. It was agreed that the LUC would recheck those identified as orphaned definitions.

The LUC also suggested members consider redefining a few items. She reminded members that in one case there was a clear sense that definitions were not as clear as they should be regarding the way in which a structure with a second dwelling must be attached [ZBA 2014-02 Bronstein-Ruppel] that might be redefined. Lick suggested that the LUC take all of the changes recommended so far and put them in a single “marked-up” draft document. It was agreed that the LUC should pass the draft document by town counsel and email the “mark-up” draft document to members for their review well in advance the next meeting.

The Chair asked if there was anyone else interested in the OEP Spring Conference and asked that they let the LUC know if they are. The LUC told members that she needs to know by April 23<sup>rd</sup> when registrations close.

The Chair told the Board that, as there are no cases to be heard, there will be no meeting next month.

**Next meeting is to be held Wednesday, June 17, 2015 at 7pm.**

**There being no further business, it was voted unanimously that the meeting be adjourned at 8:50 PM.**

Respectfully submitted,

Laurie Hayward  
Land Use Coordinator