

**LINCOLN PLANNING BOARD
REGULAR MEETING MINUTES
WEDNESDAY, APRIL 12, 2017 – 6:00PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

APPROVED

Present: Chairman Jim Spanos, Vice-Chairman R. Patrick Romprey, OJ Robinson - Selectmen's Representative, John Hettinger, Paula Strickon, Ron Beard (alternate & Fire Chief), Callum Grant (alternate)

Members Excused: Norman Belanger (alternate)

Members Absent: None

Staff Present: Town Manager and Town Planner Alfred "Butch" Burbank and Wendy Tanner (recorder)

Staff Excused: Planning and Zoning Administrator Carole Bont

Guests:

- **Paul J. Beaudin II** – resident and property owner of 2 Louis Lane, Lincoln, NH 03251 (Map 117, Lot 069), PO Box 872, Lincoln, NH 03251-0872.
- **Myles Moran**, resident of 11 O'Brien Avenue, Lincoln, NH 03251 (Tax Map 117, Lot 024) whose address is PO Box 184, Lincoln, NH 03251-0184 and Principal/Broker for Moosilauke Realty, 104 Main Street, North Woodstock, NH 03262
- **Cindy Rineer** – resident and co-owner with Dennis L. Rineer of 176 Pollard Road (Map 114, Lot 057) PO Box 878, Lincoln, NH 03251-0878.

I. CALL TO ORDER by the Chairman of Planning Board (PB); announcement of excused absences, if any, and seating of alternates(s), if necessary.

Chair Spanos called the meeting to order at 6:00 pm.

Chair Spanos polled the board asking if there were any objections to Vice Chair Pat Romprey attending the meeting via speaker phone. There were no issues.

Vice Chair Romprey was present via speaker phone.

II. CONSIDERATION of meeting minutes from:

- March 22, 2017

Motion to continue until next meeting the review of the minutes from March 22, 2017.

Motion: OJ Robinson **Second:** John Hettinger **All in favor:** 5-0

III. CONTINUING AND OTHER BUSINESS (Staff and Planning Board Member/Alternates):

IV. NEW BUSINESS:

- A. Paul Beaudin – Request for Planning and Zoning Department to Treat Proposed Project (i.e., Installation of a Ground Based Twenty-Two Solar Panel Array) as a residential "Fence" with a One Foot (1') Setback Requirement Requiring No Land Use Permit Versus Treating Project as a "Structure" with Fifteen Foot (15') Setback Requirements Requiring a Land Use Permit.**

Vice Chair Romprey asked if this presentation by Paul Beaudin could be considered a “Conceptual”. Chair Spanos said that it was a “Conceptual”. Paul Beaudin complained that his project had not been “billed” or advertised as a “Conceptual”.

Presentation By Paul Beaudin:

Beaudin said that originally when he talked to Planning Administrator Bont he told her of his intent to install a ground-based solar array. Beaudin said that in his conversation with Bont, she said she was not sure how to treat a ground based solar panel array and she would look into it. Bont then informed Beaudin that it was a “structure”.

Beaudin complained that his presentation was not advertised as a “Conceptual” on the Planning Board’s Agenda for this meeting.

Beaudin said he told Bont that the ground based solar panel array was “equal to a fence”. What Beaudin wanted to know was why the solar array was being considered with a more stringent setback than a fence.

Then Beaudin said it was decided between Bont and Beaudin that Beaudin would come before the Planning Board for a preliminary discussion. Beaudin said that if the Planning Board wanted to call it a “Conceptual”, they could – a “Conceptual” or a “Preliminary Discussion”.

Town Manager/Planner’s Response:

Town Manager/Planner Burbank said that the Planning Board could consider Beaudin’s presentation to be a “Conceptual” however, it should not go any further than that. Beaudin did not submit an application for anything. In his opinion, the reason that Beaudin is before the Planning Board is because Town staff made an administrative decision that the ground based solar panel array is a “structure”. Beaudin disagrees with that administrative decision. Beaudin was told to appeal to the ZBA. Beaudin disagreed. The Planning Board does not have the authority to hear an administrative appeal of an administrative decision. The problem is that situation is not clear because Beaudin does not want to file a Land Use Permit Application because he does not think he has to. Beaudin wants the Planning Board to hear his arguments and make an administrative decision anyway.

Town Manager/Planner Burbank said because Beaudin has not submitted an application the staff arguably has not made an administrative decision yet because there has been no formal request. Let the Planning Board just have a conversation with Beaudin about this idea and just keep it “Conceptual”.

Beaudin said, “If that is what you guys want to call it, I’m fine with that.”

Presentation By Paul Beaudin continued:

Beaudin said that he started this process because solar power is an environmental-friendly option – more so than fossil fuels. Consequently, Lincoln should not apply “more stringent regulations” to ground-mounted solar power arrays. Ground-mounted solar panel arrays in particular and solar energy in general have no ill health effects or negative life safety effects. The Town should compare solar panel arrays to other energy generation sources. The Town of Lincoln has not adopted any specific regulations pertaining to ground-mounted solar installations despite an overwhelming vote at town meeting two or three years ago (he thinks), to allow full property tax exemption for solar panels.

Beaudin said he thinks that if the Town staff generically tries to apply the current Land Use Plan Ordinance (LUPO) to ground-based solar panel arrays that approach is not appropriate to the specific regulations and orientations that are involved in solar installations.

Beaudin said that ground-mounted solar arrays can only be installed in specific locations in order to obtain the most output with the least number of panels. This limits the location of the ground-based solar panel arrays on most residential lots. Therefore, he thinks that the Town's setback "should be more minimum to allow for proper placement in order to obtain the highest output of solar with the least amount of panels".

Beaudin said that when he was told the Town was going to treat the ground-based solar panel array as a "structure" he looked at the definitions of a "structure" in the Land Use Plan Ordinance (LUPO). If the definition of "structure" was going to be strictly applied, a fence is also a "structure" as defined by the Land Use Plan Ordinance. A residential fence has to be only one foot (1') set back from the property boundary line; A fence can be within one foot (1') of the property boundary line.

Beaudin said a rock retaining wall is by definition a "structure", however, a retaining wall can be right on the property boundary line because retaining walls have no setback requirements. We have signs which are by definition a "structure" as defined in the LUPO, however, signs have no setback requirements. Beaudin said then there are what are called "accessory buildings" which have a different setback requirement than a primary or main building.

Beaudin said that when he talked to Bont about this she informed him that she was going to apply the more stringent setback requirement for a primary building. That is why he came to speak to the Planning Board. He cannot understand how Bont could require a ground based solar panel array to meet the most stringent setback requirement for a primary building when the Town allows someone to have a fence, a sign or a rock retaining wall which are also considered "structures" within a lesser setback. Furthermore, these other "structures" are allowed to have less stringent setbacks than an accessory building or a primary building.

Beaudin passed out a diagram entitled "Standard 2X11 portrait Ground Mount Front with 10' Post Spacing" with the logo from SunRay Solar to the Planning Board members. (See Appendix A.) Strickon said that most fences, signs or retaining walls are not ten and a half feet (10 ½') tall like the ground mounted solar panel array that Beaudin is proposing. Beaudin said actually signs are that tall. Strickon said that the signs are not only one foot (1') from the edge of the road. Beaudin said, "If you look at some of them [signs], they are within the setbacks. Some of them are closer than that. Some of them are (you would have to take a look around)." Beaudin said, "I've looked around that they are. Rock walls and fences can be eight feet (8') or higher."

Questions by the Planning Board:

Strickon asked Beaudin how he was measuring the setbacks; when Beaudin was talking about a "setback", was he talking about the distance from the corner of the solar panel array to the property boundary line or the distance from the post of the array to the property boundary line. Beaudin said, "No ma'am, from the back, from the back of the sign. The setback, I think should be from the back of the sign. Just like it is from fence."

Strickon said that Beaudin was asking for a one foot (1') setback. Beaudin had submitted a diagram that showed eight and a half feet (8.5') from one edge of the solar panel to the other end of the solar panel. Looking at the diagram, Strickon asked Beaudin, "Exactly where are your

posts going to go? One foot (1') from the property boundary line?" Beaudin said, "No ma'am. They would go from what would be one foot (1') from the actual edge, the back edge [of the solar panel], where this line is, to the property line."

Strickon asked if the panels would be facing into the property. Beaudin agreed. Strickon asked where the property was. Beaudin explained that the lot was his residence on Louis Lane and he explained where his lot was. (Map 117, Lot 069 – 2 Louis Lane – Rural Residential (RR) District)

Beaudin said that the other thing to consider here is that his lot is really a residential lot in a rural residential neighborhood. There are two different ways to set up the solar panel array.

- One way is to put a battery in the array and try to come off the grid. But if you come off the grid you cannot produce enough power with a battery to operate your whole house.
- The other way is to have you make power during the high demand periods or the peak season. Your house gets the first use and the excess power goes to the grid owned by the power company and gets credited to your account.

Strickon said, "And then you sell it back to the grid?" Beaudin said "You don't sell it back [to the grid]." Beaudin said a property owner actually does not get full credit for the excess power he generates. The excess kilowatt hours go back to the power company and the power company credits the kilowatt hours back to the property owner at .04 cents less per kilowatt hour than what they would charge the property owner.

Fire Chief Beard said that amount could be the transmission fee for whatever the power company assigns to the excess power the company is purchasing. Beaudin said it is just .04 cents less. It is just the amount the power company has determined. That amount is probably their cost for administrative handling.

Chair Spanos asked if there was any limit to how many credits a property owner could obtain from the power company. Beaudin said he did not think so, however, the power company discourages a homeowner from generating more power than the homeowner is going to use "because it is not very profitable". If the property owner is going to generate power to try and sell it back to the power company, the property owner is only going to get .04 cents less per kilowatt hour so the generation of the power really is not worthwhile for the customer and the power company does not really encourage that. With a commercial user, however, the power company has different requirements. There are things the power company does to encourage commercial property owners to generate their own power, but the power company does not do that for residential users.

Vice Chair Romprey asked how far back from the fence line the in-ground posts or support structures for the solar panel array would be. Beaudin said the support structures would be about six feet (6') feet from the support structure to the property line.

Vice Chair Romprey asked Beaudin if the part of the solar panel that is fastened to the post is about six feet (6') or so up the fence post. Beaudin said "Off the property line, that is correct."

Vice Chair Romprey said that since he has been on the Planning Board, which is a fair amount of time, he could not recall any situations where the Town imposed a fifteen foot (15') setback for fences or outbuildings or anything of that nature unless this proposed project would be blocking or somehow obstructing other people's lines of site. Vice Chair Romprey said he did not see

why a ground mounted twenty-two (22) solar panel array should be treated as a “structure” “with a minimal lot line”.

Beaudin said that the only reason why he tried to compare a ground mounted twenty-two solar panel array to a fence is because he looked at the new definition of structure and compared it to the old definition of a fence. Beaudin read the definition of a fence from the Land Use Plan Ordinance.

Fence – A structure that is an artificially constructed barrier of any material or combination of materials erected to enclose, screen or separate areas of land.

Beaudin continued that the ground mounted twenty-two solar panel array “truly is a screen”; at that height (10 ½ feet) the panels will screen him from the property in back. That is the only reason he was trying to draw that comparison. When he looked at the Land Use Plan Ordinance (LUPO), he found there are a number of things that qualify as “structures”. There are fences, rock walls, signs and accessory buildings. There is no real clear distinction in the LUPO about what the setbacks for these “structures” really are and why.

Vice Chair Romprey said going beyond the LUPO’s definition for a “structure”, the State considers anything that is permanently fastened in place on the ground to be a “structure”. Other Planning Board members agreed. That being said, there is no differentiation in Lincoln’s Land Use Plan Ordinance for these specific types of individual structures. Vice Chair Romprey said, “Take a clothesline”. If you put a clothesline up that is permanently anchored to the ground, does that clothesline have to be fifteen feet (15’) feet from the boundary line or can it have a zero foot (0’) setback from the property boundary line? Vice Chair Romprey said that in his opinion, most people would think that the LUPO requires a zero foot (0’) setback from the property boundary line.

Beaudin said he agreed. There should be different setbacks for different types of structures. He is wondering why a ground mounted twenty-two solar panel array would be treated with the most restrictive setback requirement like a primary house.

Town Manager/Planner Burbank’s Response:

Town Manager/Planner Burbank said that the distinction between a “structure” and a “fence” that he and Bont made is that unlike a fence, the impact of a ground mounted twenty-two (22) panel solar array on the neighbors could be substantial.

Town Manager/Planner Burbank said that the actual impact of the proposed ground mounted twenty-two solar panel array on Beaudin’s neighbor is somewhat dependent on what Beaudin’s specific plan is for their placement. Town Manager/Planner Burbank said that Beaudin has talked about angling the ground mounted twenty-two solar panel array into his property and that angling the array may reduce the impact of the project on his neighbors. However, if the Planning Board allows Beaudin to treat the ground mounted twenty-two solar panel array like a “fence” it will be setting a precedent.

Town Manager/Planner Burbank said that one of the primary ideas behind creating setbacks requirements in a zoning ordinance is to minimize the negative impacts on the neighbors - like crowding of the neighbors’ property usually for reasons of public policy – and to allow for the safe placement of utilities and to help preserve things like wetlands. Especially in a rural residential area, one purpose of a setback is to prevent “creep”. One purpose of a fence also is to stop “creep”. It is so that people can put a fence one foot off their line and it keeps matters civil

between neighbors. Mark Twain, said “Good fences make good neighbors”. He was not sure that this ground mounted twenty-two solar panel array when constructed, would meet the spirit of that purpose.

The courts have held that the regulation of light, air, and privacy are valid aspects of the police power.²⁰ By the adoption of setback lines, municipalities may provide a yard space²¹ for lawns and trees,²² thus keeping dwellings safe from the dust, noise, and fumes of the street and adding to the general attractiveness of the property.²³ Such a yard space creates a better home environment,²⁴ reduces fire hazards by providing a greater distance between homes,²⁵ provides for adequate light and air,²⁶ reduces hazards at street corners resulting from obstructions to the motorist's view,²⁷ relieves street congestion,²⁸ and by limiting the size of buildings avoids an overtaxing of sewage facilities.²⁹ These have all been upheld as valid ends for [setback] regulation.

William and Mary Law Review Volume 10, Issue 3, Article 14, Page 739 (1969) by Thomas D. Horne.

Setback *A distance from a curb, property line, or structure within which building is prohibited.*

Setbacks are building restrictions imposed on property owners. Local governments create setbacks through ordinances and Building Codes, usually for reasons of public policy such as safety, privacy, and environmental protection. Setbacks prevent landowners from crowding the property of others, allow for the safe placement of pipelines, and help to preserve wetlands. Setbacks form boundaries by establishing an exact distance from a fixed point, such as a property line or an adjacent structure, within which building is prohibited. Generally, prospective buyers learn that land is subject to setback provisions when they are considering purchasing it. This information is important to future development plans, because setbacks remain in effect until changed by law or special action of a local government.

Setbacks can significantly affect a property owner's right to develop land or to modify existing structures on the land. For this reason they can influence property values; severe restrictions on land can decrease its value. Violating setback provisions can lead to legal action against a property owner, and penalties can include fines as well as an order to remove noncompliant structures. Property owners whose desire to build is stymied by setbacks have few remedies. They can petition their local government by applying for a variance—a special permission to depart from the requirements of zoning ordinances—but variances are generally granted only in cases of extreme hardship. Litigation over setbacks is common.

Town Manager/Planner Burbank said that while erecting a solar panel array of this size might not be a problem in Beaudin's specific situation [because his neighbor is his nephew], if the Town starts the ball rolling down the road in this direction, Burbank could see that in future cases the neighbors would want to have significant input based on how these “structures” impact their views. Town Manager/Planner Burbank said that although Beaudin has made some good points, Burbank and Bont both think that a ground mounted twenty two (22) panel solar array is different from a fence in that it could have a significant negative impact on the neighbors.

Town Manager/Planner Burbank acknowledged that a solar panel array is functional; it produces electricity, as opposed to a fence or a wall which is either meant to protect property in the case of a wall (or to make good neighbors). When someone builds a fence they still have to take their neighbors into consideration; the good side of the fence still has to face their neighbors.

Town Manager/Planner Burbank said that the idea of constructing ground mounted multi-panel solar array could catch on. The impact on the neighbors of such panels in this compact area of

Lincoln would be substantial as opposed to the impact if Beaudin mounted the solar panel array on the roof of his house. If Beaudin mounted the panels on the roof of his house it is clear that the Town would not need a Land Use Permit from Beaudin because the solar panel array would not meet the criteria for issuing a Land Use Permit. A roof mounted solar panel array would not expand the footprint of the building. The only roof mounted solar panel array in town right now is at Rodgers Ski and Sport Shop on NH Route 112/Main Street. The panels just aim up towards the sky and orientation is there. [Note: Lincoln Green also has a roof mounted solar panel array.]

Town Manager/Planner Burbank said that if the Town requires Beaudin to stay within the setbacks, depending on whatever the setbacks are for the Zoning District he is in, Beaudin still has the option to apply for a variance from the ZBA. If Beaudin thinks the ground mounted twenty two (22) panel solar array is not going to affect anyone and none of the neighbors will care, then it is up to the ZBA to be persuaded to grant a variance if the project meets the criteria for a variance.

Planning Board Discussion:

Ground Mounted Solar Panel Array Is Not Small:

Hettinger said that when he looked at the drawing submitted by Beaudin he could see that the solar panel array was not a small object. The solar panel array was going to stick up ten and a half feet (10 ½') into the air and would be thirty-six feet (36') long.

To address the issue of height comparing the height of the proposed solar panel array to the height of a retaining wall, Strickon read the definition in the Land Use Plan Ordinance.

Hettinger asked Beaudin if the solar company gave him a reason why they designed the ground mounted solar panel array with the panels lined up all in a row. Beaudin said what he needs for a successful solar panel array all deals with the orientation to the sun. The less perfect the orientation of his lot is in relation to the sun the more panels he needs. "So you truly are better off to have the orientation be as close to perfect as you can so that you have less panels."

Hettinger said to Beaudin, why could he not take the top tier of solar panels and move it eight feet (8') sideways so that it would be at the same level as the bottom tier of solar panels so the overall solar panel array would be "fence high". Trying to explain, Hettinger told Beaudin to leave the bottom tier where it was now. Take the top tier and move it to the same elevation as the bottom tier but maybe eight feet (8') parallel to the other tier. Strickon said that the solar panel array would be the same length, but the overall array would be a greater depth. Robinson said it would be two parallel solar panel arrays.

Beaudin disagreed and said one row of solar panels would block the other row. Beaudin said that he would need a lot more depth to his lot in order to configure the solar panels that way. He does not want to do that because when he makes the solar panel arrays parallel as you see them in big solar array farms, the panels have to be tipped at just the right angle so that they can capture the solar power. They use more commercialized panels which collect more of the sun's rays and transfer that to power. "You really try to do it as minimally impactful as you can and try and set it on the right aspect." Whatever they need in order to be able to get the kilowatt hours that you need with the fewest number of panels. Because, (A) they are expensive and (B) the longer it is the more likely you can "make it go longer, you can make it go taller, you can get bigger panels, but then you are growing everything. They try and keep it minimally accessible to that."

Hettinger said if Beaudin planted a certain kind of shrubbery behind the solar panel array, then he would not see the solar panel array sitting there up that high. Beaudin could plant different bushes and trees back there. Beaudin said he did not think that would work because an arborvitae grows thirty feet (30') tall and then he would have to cut the tree down. It is not an easy thing to site a ground mounted solar panel array.

Strickon asked Beaudin if his client wanted to erect these solar panels. Beaudin said it was not his client who wanted to erect the solar panel array; it was him. Strickon said that she had no idea and apologized to Beaudin. Strickon said, "What do your neighbors think?" Beaudin said that he talked to two of them and they had no problem. Strickon said that she meant neighbors who are not blood related. Beaudin said that he only has blood related neighbors.

Beaudin said, "No disrespect intended, but that is my property and what I choose to put on it should be up to me. There are a lot of signs that go up...I could put a fence up and paint every other board bright pink, black, polka dots, and my neighbor might not like it but that is tough, because I can put a fence up and do whatever I want."

Why Not Put Solar Panel Arrays On The Roof?

Beaudin said he started out saying that solar was a very environmentally friendly way to go. He started out saying that the Town of Lincoln gave solar panel arrays "a tax free status which really shows the support of it in town". Beaudin said he personally does not like to see solar panel arrays on roofs, for two reasons: (1) Because if the panels are not turned exactly right the panels have to be bigger. (That is why you see so many panels on Rodgers Ski and Sport Store, because his panels may not be turned exactly right, so in order to produce the power that is needed to "get that beacon," he needs to install a lot more panels).

Strickon asked if Beaudin finds the solar panel arrays offensive to look at. Beaudin said no, he does not.

Beaudin said that the other disadvantage to having solar panel arrays on the roof of a building is that in New England property owners have to redo their roofs every now and then. Beaudin said he does not want to have to rip his solar panels off to redo his roof because it becomes just an additional cost later on down the road. Beaudin said that the question to the Planning Board is, why should the solar panel arrays have to meet the most stringent setback requirements and not the least stringent. The Town does not have any regulations that specifically deal with solar panel arrays. I'm not saying that due to the fact that Lincoln lacks any regulations, there are no regulations pertaining to them. I'm just saying, why should they be met with more stringent regulations.

Hettinger asked Beaudin if he was planning to put the solar panel arrays in parallel to his property boundary line or would the solar panel arrays be angled away from his property boundary line. Beaudin said that when the Solar Power company finally get out there to do the actual site assessment, they will angle the solar panel arrays the way that they have to be to capture the solar energy.

Hettinger asked Beaudin that when he said one foot (1'), did he mean that one end of the solar panel array would be one foot (1') away from the property boundary line, but the other end of the solar panel array may be further away from the property boundary line. Beaudin said that one end of the solar panel array may be one foot (1') away from the property boundary line, but the other end may be three feet (3') away. It may have to be turned a little one way or the other.

Beaudin said he could see the Planning Board's concern about setbacks if it was a life safety issue or if something was going to burn. He took a look at the application and tried to answer the questions. The solar panel array is all metal. It is not going to burn. If it falls down it is going to fall completely on his property because it is all pitched forward. It is not going to blow away any more than a sign might blow over. A sign is not anchored to the ground like the solar panel array will be. Shingles fly over into other people's yards. He was trying to figure out why the setbacks for solar panel arrays should be more restrictive than setbacks for a fence or a sign or a retaining wall or an accessory building and he just could not come up with a real good answer.

Fire Chief Beard said that what he has read so far about solar panel arrays, to get the most efficient use out of the panel and the sunlight the panels need to be oriented "true south", not magnetic south. The solar engineer can accomplish that by orienting the panels in a certain way. Not every roof in Town can accept solar panels. In the case of Rodgers Ski and Sport Store, Rodgers' roof does not face exactly where it needs to face for maximum solar benefit. With ground mounted arrays Beaudin can try to get the most out of the panels he is investing in. However, if Beaudin is allowed to put solar panel arrays within the setback areas, everyone will want to do it. Beaudin's true south may not impact his neighbors, but on another building lot where someone wants to put a solar panel array in their yard and their true south where they are going to have to point the solar panel array is going to be aimed right at their neighbor's house.

Beaudin said that there is no glare on the solar panels; they are blue and when you drive by them you do not get a glare – they are not like mirrors. Chair Spanos said that the solar panels are made to absorb the sun rather than reflect it.

Beaudin said that in order to work properly the solar panels need to be pointed at the sun. "Again, I'm not trying to be rude, but if you put it on your property, you should be able to put it where you want as long as it is on your property. As long as it is not causing a health safety risk or catch on fire, like I said, to be honest with you, the ones on the roof are more hazardous than the ones on the ground. They have load factors on the roof so the ones on the roof probably bear a lot more regulation than the ones on the ground because of the structural issues. In most cities and across this country the roof ones do have more regulation because of that. Because venting a roof, they want to make sure that the whole roof is not covered because if the Fire Department goes up there to vent the roof and they can't find a place to vent it because the solar panels are in the way. They actually have some in California they do a lot of solar, they actually check the structure to make sure that it will hold the extra weight plus snow, or other load factors."

Fire Chief Beard said that in some areas they do not get snowfall so the contractors do not engineer roofs for snow load. In order to add a solar panel array onto a roof like that, many times the property owners have to redo their roofs or add onto the truss system within their home in order to support the solar panels. Beaudin said that is why he wanted to mount his solar panel array on the ground.

Town's Response:

Town Manager/Planner Burbank said that he and Bont are involved in this matter from an enforcement standpoint. In this case, although Beaudin has made a compelling argument that the Town should apply a lesser setback for solar panel arrays, the Planning Board does not have the legal authority to tell Beaudin to go ahead and put the ground mounted solar panel array up in the setback areas. In the Planning staff's opinion this issue would still need to go to the ZBA for a variance.

Town Manager/Planner Burbank said that unless the Town changes the wording of the LUPO to specifically address setbacks for ground mounted solar panels, from an enforcement standpoint, the Town staff cannot “play this game”. For example, what happens if a month from now someone else comes in with a request to put a solar panel array within the setback area – within one foot (1’) of the property boundary line, but it is a totally different situation. He has neighbors who do not want to see his solar panel array blocking in their view. His panels require a totally different orientation to capture the sunlight. The new applicant has asked to put the solar panel array one foot (1’) away from the property boundary line. How is the Town going to try to enforce something like that and be consistent?

Town Manager/Planner Burbank cautioned the Planning Board. There is a mechanism in place for Beaudin to do what he wants to do; he can apply for a variance to the ZBA. However, Burbank does not think that the Planning Board should give Beaudin “carte blanche” and say that he does not need to comply with the setback requirements in the LUPO as written; that position is not legally defensible.

Town Manager/Planner Burbank said that the issue of setbacks for ground based solar panel arrays could be addressed at the next Town Meeting with an amendment to the LUPO. As it is right now, however, with the ground support structures that Beaudin needs to put in the ground and then the size of the solar panel array itself, it meets the definition of “structure”, requiring a Land Use Permit.

Town Manager/Planner Burbank said there is a process in place for Beaudin to apply for a variance. The process does require Beaudin to provide his abutters with written notification so his neighbors would be able to offer input at the ZBA hearing. Town Manager/Planner Burbank said he fully supports solar power as an alternative form of energy, however, he does not think the Planning Board should say solar panel arrays can go anywhere the property owners want to put them. He guarantees the Town will get into a riff at some point with somebody in town who sees the location of the solar panel array as a problem.

Planning Board Discussion

Hettinger said that somebody will want a solar panel array covering their entire front lawn on Pollard Road. Chair Spanos said that they could do that now provided they comply with a fifteen foot (15’) foot setback.

Town Manager/Planner Burbank said that they can do that now but after doing some research the Planning Board could decide to propose an amendment to LUPO to increase the setbacks for solar panel arrays; the Town could decide based on what the neighbors say at the public hearing that they have to have a thirty foot (30’) buffer or setback for a solar panel array. How much more of a setback do you want?

Beaudin said he is just trying to figure out why he is being given more restrictive setback for a solar panel array than for a sign or a fence. If the Town does not have any regulations pertaining to solar panel arrays they should not have to come before the ZBA for a variance to be installed. He is looking for an explanation, for a rational reason why he should have to do that.

Strickon said at this time there are no specific regulations in the LUPO that pertain to solar panel arrays. The Planning Board has to go by what the Town has for regulations until the Town can put something in in the LUPO specifically to address solar panel arrays. The Planning Board cannot push anything through until after an amendment is adopted at Town Meeting next March.

Hettinger said that just looking at the drawing Beaudin provided he found it difficult to appreciate the size and dimensions of the solar panel array. Hettinger said that the Town Hall Conference Room is about thirty-six feet (36') long and the walls of the room are about ten feet (10') high. The solar panel array that Beaudin is proposing to put in is basically the size of the conference room wall. When that size solar panel array goes on the edge of Beaudin's property, Beaudin might not mind it, but his neighbors may, so the Planning Board really has to be careful about what he is doing.

Vice Chair Romprey said he understands where Town Manager/Planner Burbank is coming from but he thinks that Beaudin has a valid point. Vice Chair Romprey said that "over the last umpteen years" various property owners have been allowed to build structures within the setbacks and all along the property boundary lines, including outside boiler systems, ancillary buildings, and any number of different structures. None of those property owners were required to get a variance from the ZBA to place them within the setback areas. Those boiler systems, ancillary buildings, etc., were all considered to be "structures". How can the Town take a different stance at this point? Is the Town going to take a different stance because the solar panel array is a different type of structure? Is the Town going to make a different rule for each type of structure? Vice Chair Romprey said he does not think the Town has the authority in the LUPO to do make a different setback rule for different types of structures. Vice Chair Romprey said he does not think the Town has the authority to make Beaudin go to the ZBA to get a variance to build the solar panel array. If the Town is going to start naming each individual type of structure and give each type of structure a different setback requirement, the Town will have something that looks like Lincoln's original sign ordinance and it will be impossible to interpret or enforce. Vice Chair Romprey said that in his opinion Beaudin is correct. Vice Chair Romprey said there is nothing in the statutes or in the LUPO that says Beaudin has to go the ZBA to get a variance to do this.

Vice Chair Romprey said that in his opinion this is a Planning Board issue, not a ZBA issue. The Planning Board has never denied anyone who wanted to put up an accessory building or whatever, right on the property boundary line or the lot line. Vice Chair Romprey said he does not think that the Town should set precedent by denying this one.

Hettinger said that the difference is the order of magnitude or the relative size of the solar panel array. The accessory buildings that have been approved by the Planning Board to be placed within the setback areas were structures on the order of four feet by four feet (4'x4'). The solar panel array that Beaudin is proposing is thirty-six feet by ten feet (36'X10').

Vice Chair Romprey said that is why he was saying this is a Planning Board issue, not a ZBA issue. If the solar panel array goes before any Board it should be the Planning Board because the Planning Board is the Town Board that has been allowing this kind of encroachment into the setback areas to go on for umpteen years. If the Planning Board wants to treat the solar panel array differently, well good, but that is a Planning Board decision, not a ZBA decision.

Robinson asked the Planning Board how accessory buildings were being allowed on a nonconforming setback by decree of the Planning Board. Vice Chair Romprey said the Planning Board "has been permitting this to happen for years". Vice Chair Romprey said to drive around Town and find twenty (20) or thirty (30) of them easily. "Most were just permitted and never came before the Planning Board. They are already out there and already existing. How do you change the rules mid-stream?"

Robinson said that is the Planning Board's job. That is why the Planning Board and Town Meeting continually change these ordinances on an annual basis. First of all, Robinson agrees with Beaudin that the Town should be encouraging this kind of development. With that said, the way the LUPO is now, he would consider a solar panel array to be a "structure" and subject to the rules and regulations of a "structure". He does not see how the solar panel array could not be deemed a "structure".

Vice Chair Romprey said the Planning Board could call the solar panel array a "structure", but what is the appropriate setback for it? A fence has a one foot (1') setback. A primary building has a fifteen foot (15') setback. Accessory buildings less than one hundred fifty (150) square feet have a ten feet (10') setback from the property boundary line. Which setback is it?

Robinson said if a solar panel array qualifies as a "fence" Beaudin could locate the solar panel array one foot (1') from the boundary line.

Robinson said, however, if the solar panel array is a "fence" there is an eight foot (8') height limit. Beaudin said the fence can be taller than eight feet (8'). Robinson asked Beaudin where he saw that? Beaudin said "it is in the ordinance but you have to get an exception". Beaudin said he thought he would need to go to the Planning Board to get permission to build a fence higher than eight feet (8'). Chair Spanos said if something requires a Special Exception that means it would have to go to the ZBA. Robinson said that he thought there was an eight foot (8') limit on residential fences.

Article V. General Regulations

Section I. Fences

3. Non-Residential Lots:

- a. For non-residential fences, a land use permit will be issued for the fence only after the proposed fence is approved by the Planning Board under its Site Plan Review Regulations, or, the Planning Board grants a waiver for the proposed fence from its Site Plan Review Regulations.
- b. The Planning Board may permit the location of a proposed fence to be located within the setback area of the applicable land use district. The Planning Board may allow fences on lots with non-residential use to be higher than eight feet (8') from top of adjacent ground if the Planning Board finds that: a., public safety is not adversely affected; and b., the rights of an abutter are not adversely affected
- c. Fences shall be located at least one (1) foot from the property line unless otherwise permitted by the Planning Board via site plan review.

4. Residential Lots:

- a. Residential fences cannot be higher than eight feet (8') from the top of the adjacent ground.
- b. Residential Fences shall be located at least 1 foot from the property line.
- c. Common Fences as defined in RSA 474 may be constructed along the property line.

Town Response

Town Manager/Planner Burbank said that Beaudin is before the Planning Board for a "Conceptual". He warned the Planning Board that they needed to "stay in the idea stage right now". The Planning Board is talking about a "Conceptual" because Beaudin has not formally applied for anything.

Planning Board Discussion

Chair Spanos asked if there was any reason why Beaudin did not want to put the solar panel array on his roof. Robinson said, “Let’s say that Beaudin goes home and says that he is going to put it on his roof. My question is, should the Planning Board address the issue of solar panel arrays in our Land Use Plan Ordinance (LUPO)? Are we going to treat a ground mounted solar panel array as a fence, an accessory building or a primary building for setback purposes?”

Robinson said what about roof-mounted solar panel arrays? Should the Planning Board address roof mounted arrays? Vice Chair Romprey said that if Beaudin is putting a solar panel array on his roof he is not altering his footprint, so no, absolutely not, the Planning Board should not address it. Robinson asked Vice Chair Romprey if he was saying that the Planning Board should not even deal with roof mounted solar panel arrays. Vice Chair Romprey said if Beaudin is putting the roof-mounted solar panel array within his existing footprint, what does he need to get a Land Use Permit for. Town Manager/Planner Burbank concurred.

Robinson said that if Beaudin puts roof-mounted solar panel array on his roof the Planning Department does not have to deal with this issue. Vice Chair Romprey concurred. Robinson said that he is coming in next week. Beaudin asked why he was saying this.

Robinson said that the Planning Board should address the subject of ground-mounted and roof-mounted solar array panels. Robinson’s point is that it does not matter if the solar panel arrays are mounted on the roof or the ground,. The Board should address the issue of solar panels in general for everyone, not just Beaudin in this case.

Beaudin said that he agrees and that is why he is here. Beaudin said that he does not think he needs to come here to get permission to put up his solar panel array. Chair Spanos said that the Planning Board is talking about what the Town has “on the books right now, not what we might put on the books in the future”.

Beaudin said that he came here to get his questions answered and to see if the Planning Board was thinking “along the same line”. Beaudin believes that in the absence of anything in the Land Use Plan Ordinance specifically addressing solar panel arrays that there are no Town regulations that pertain to solar panel arrays. The Town can call a solar panel array a “structure” but the Town cannot say “...that it is any more of a structure legally. You can call it a structure, but in a court of law you are going to bring that up. And is it the same structure as a fence? Why are you calling a fence a structure? Why are you calling a sign a structure with no setbacks? Why are you calling a rock wall a structure with no setbacks? Someone else might not like a sign but it is right in their back yard and it is fifteen (15’) or thirty feet (30’) tall with a big face to it.”

Chair Spanos said that he did not think the Planning Board could say “no” to something because a neighbor might think it was ugly. Beaudin said, “Right, it’s really hard to look at that.”

Grant said that he has an ideal south facing roof on his own house. He is one hundred percent (100%) in favor of solar power. Grant has had two (2) solar companies provide him with quotes and surveys on his roof for an installation of solar panel arrays within the last two (2) months. These companies have said that because his house was facing due south it was great for solar power. They could put twenty-one (21) panels on Grant’s roof.

Grant said although he is a proponent of solar power, in his opinion a ground mounted solar panel array is certainly a “structure”. The solar panel array is permanently installed in the ground. If this solar panel array is built as proposed within one foot (1’) of the property

boundary line with the neighbor, the person installing the solar panel array would be denying his neighbor any chance of installing a similar installation within one foot (1') of his property boundary line by the very sunshade effect of his own panel array. Grant said he was not speaking about Beaudin personally, but just in general.

Vice Chair Romprey said that the Land Use Plan Ordinance (LUPO) does not distinguish between one type of "structure" and another when it comes to setbacks.

Grant said that a ground mounted solar panel array is a "structure" and, therefore, it comes under the Planning Board's authority. Chair Spanos said that with that logic no one could put a solar panel up because it might block the next guy's sun. Robinson disagreed and said that with that logic a solar panel array is a "structure". Chair Spanos said that we are not disputing that a solar panel array is a "structure"; it is which setback should be applied to the ground mounted solar panel array that is in dispute. Robinson said that if it is a "structure", the setbacks for a "structure" are in the Land Use Plan Ordinance.

Town's Response

Town Manager/Planner Burbank said the Planning Board should not be picking a setback for solar panel arrays based on a conversation. The Planning Board should be picking setbacks based on the language in the zoning ordinance – Land Use Plan Ordinance (LUPO). In the Rural Residential (RR) District there are fifteen foot (15') setbacks. That is indisputable. Everywhere around Town where the lots are in the Rural Residential (RR) District the fifteen foot (15') setback applies. Since Bont and he have been working in Lincoln he is not aware that they have treated a furnace or any another structure any differently that he is aware of. If the Planning Board or the Planning Board department did something different twenty (20) or thirty (30) years ago the Planning Board would know. Clearly, he sees this kind of intrusion into the setback areas all over town.

Town Manager/Planner Burbank said that after all of the thought and work that went into creating the zoning ordinance, it appears that the Planning Board and the townspeople have eased into zoning rather slowly in terms of actual enforcement of the provisions of the zoning ordinance. Now the Planning Department staff is trying to correct some of these setback infringements. In an effort to enforce the ordinance consistently the solar panel array is a "structure". The zoning ordinance is very clear on what the setbacks in different zones are. Also, with all due respect to Beaudin, fences and rock walls are specifically mentioned in the zoning ordinance. Residential fences have a one foot (1') setback. Fences and retaining walls were specifically addressed in the LUPO.

Town Manager/Planner Burbank said that in the absence of something being specifically addressed in the LUPO, the ordinance functions to prohibits uses of land unless they are expressly permitted as primary uses. That is the way the zoning ordinances in New Hampshire work. The Zoning Ordinance is "permissive" versus "prohibitory". In the case of Beaudin and the ground mounted solar panel array that he wants to erect in the Rural Residential (RR) District, he has fifteen foot (15') setback requirements. That is the rule as it sets today. The Land Use Plan Ordinance (LUPO) can be changed, but it has to be changed at the next Town Meeting.

Per the handout:

"Permissive" v. "Prohibitory" Zoning Ordinances

Most zoning ordinances in New Hampshire are of the so-called 'permissive' variety.¹ That is, in the absence of a variance or special exception, such an ordinance functions generally to prohibit uses of land unless they are expressly permitted as primary uses or can be found to be accessory to a permitted use.² The rule of accessory use is in response to the impossibility of providing expressly by zoning ordinance for every possible lawful use. Even under a permissive ordinance, a given use may be allowed even if it is not explicitly allowed. Those types of uses are said to be accessory to the use that is expressly permitted.³ Most ordinances expressly provide for some accessory uses, although the common law provides for them when the ordinance is silent on the matter.⁴

Adapted from § 9.02 Purpose of Doctrine, New Hampshire Practice, Land Use Planning and Zoning, Third Edition, Atty. Peter Loughlin

1. The opposite of a "permissive" ordinance is a so-called "prohibitory" ordinance which allows all uses not expressly prohibited. 4 Williams, *American Land Planning*, § 94.13 (1985).
2. *Windham v. Alford*, 129 NH 24, 523, A.2d 42, (1986); *Triesman v. Kamen*, 126 NH 372, 493 A.2d 466 (1985); *Hannigan v. City of Concord*, 143 NH ___, 738 A.2d 1262 (1999).
3. *Salem v. Durrett*, 125 NH 29, 480 A.2d 9 (1984) (private landing strip was subordinate to principal residential use on the property, but landing strip was not customarily associated with residential uses in the town and was not an "accessory use").
4. *Dumais v. Somersworth*, 101 NH 111, 134 A.2d 700 (1957) (garage for residential use was permitted as accessory use even though not specifically mentioned in zoning ordinance.)

Planning Board Discussion

Vice Chair Romprey asked about Maple Street where they have only eight feet (8') on either side of their buildings. Town Manager/Planner Burbank said that those homes are pre-existing, so they are grandfathered. Those homes go back to the 1920's when the paper mill was in operation. This Town is dealing with this problem all the time where houses are too close together. But going forward the property owners would have to go to the ZBA to get a variance to build in the setbacks. In the case of Maple Street, it would be pretty simple. Walk into the town office. Explain that the house has been here for fifty (50) years. Explain that you cannot move the house. Ask, can I get a variance? The ZBA would decide if that was a hardship. The process for obtaining a variance from the ZBA is all the same.

Vice Chair Romprey asked if Town Manager/Planner Burbank was saying that all structures should be treated the same way in the Rural Residential (RR) zone, regardless of whether it is a clothes line, a fence or a sign or whatever. Burbank said that he never thought about clothes lines; he did not know if anyone used clothes lines anymore.

Beaudin's Request to Treat Ground Mounted Solar Panel Array Like a Sign, a Fence or a Retaining Wall

Beaudin said that if he agrees with Town Manager/Planner Burbank's logic that all structures that are not specifically addressed in the Land Use Plan Ordinance (LUPO) must comply with the fifteen foot (15') setback requirement, then why don't signs have to meet the setback requirements? Town Manager/Planner Burbank said that the sign ordinance portion of the LUPO is specific to signs. He said he thought that signs had to be one foot (1') from the property line.

Beaudin said that the signs do not; there are no setback requirements for signs. He questioned why the setback requirements should not be applied to a fence, a retaining wall and a sign. Why

would a sign that has no setback requirements in the LUPO be allowed to be erected right up next to the property boundary line and his solar panel array would not? Why don't signs have to meet the more stringent setback requirements? Beaudin refused to accept Burbank telling him that even though a ground mounted solar panel array is not identified specifically in the Land Use Plan Ordinance, it "needs to meet the more stringent setbacks".

Strickon said the Land Use Plan Ordinance defines a fence as follows:

Fence – A structure that is an artificially constructed barrier of any material or combination of materials erected to enclose, screen or separate areas of land.

Beaudin said that he could say the ground mounted solar panel array is a "screen". Strickon said she could not see how a ground mounted solar panel array could be considered a "screen".

Hettinger said that ground mounted solar panel array proposed by Beaudin was the size of the long wall in the town hall conference room. Beaudin disagreed. Hettinger said it was. Hettinger said that on the drawing Beaudin submitted of the proposed ground mounted solar panel array the panel array was thirty-six feet (36') long and ten and a half feet (10 ½ ') high; that is a big structure. The Planning Board would be setting a precedent if they treated the solar panel array like a fence and allowed Beaudin to place the panel within one foot (1') of the boundary line. The Planning Board would be setting a precedent here so the Board members really have to think about it.

Beaudin complained that the solar panel array would be on his property; "Why can a sign be not dealt with?" Robinson said, "Does it have any meaning?" This is the Land Use Plan Ordinance. There is a definition of a "structure" in the LUPO. "Are you are saying that your thing [ground mounted solar panel array] is not a structure based on this definition?" Beaudin said that he is not saying that. Robinson said, "So you are saying that it is a structure based on this definition?" Beaudin said that he is willing to agree that based on the new ordinance from this past town meeting, Robinson is correct and his proposed ground mounted solar panel array is a "structure".

Robinson said that in the LUPO there are setback limits as to how close structures can be set to the property boundaries. Some things have general setbacks like ten feet (10') or fifteen feet (15') feet. Some things have specific setbacks that are one foot (1'), but the general setback requirements are all five feet (5'), ten feet (10'), and fifteen feet (15'). Then there are some specific things that can be closer.

Beaudin said that the LUPO actually specifies a difference. Beaudin said that in the LUPO the buildings are called "dwellings"; then there are signs, fences and things like that are called "structures". The ordinance is pretty specific on the difference between a "dwelling" and an "auxiliary building".

[Note: "Dwelling" is not defined in the LUPO. Did he mean "Residential Unit"?
"Auxiliary building" is not defined in the LUPO. Did he mean "accessory building"?]

Beaudin said the LUPO needs some work to address solar panel arrays, but in the absence of having provisions that specifically address solar panel arrays, such arrays should be treated like a sign or a fence for setback purposes. A sign does not have any setback requirements. Why don't signs have to meet the more stringent requirement?

Robinson asked Beaudin why Beaudin kept asking that same question: Why don't signs have to meet the more stringent requirement? Beaudin said, because he did not get an answer. Robinson

said, because there is a sign ordinance in the LUPO specific to signs. Beaudin said that there are no setback requirements in the sign ordinance. Robinson asked Beaudin, “So that means everything shouldn’t have a setback requirement because signs don’t?”

Beaudin continued to argue that no setback requirements should be applied to his ground mounted solar panel array or that his proposed project should be treated like a fence or a sign. Members of the Planning Board said that they thought until the zoning ordinance was changed the fifteen foot (15’) regular setback requirements applied.

Beaudin asked who owned the property down where the RiverWalk sign is (Map 118, Lot 044 – 22 South Mountain Drive). Beaudin said he does not know where the property boundaries are located for RiverWalk at Loon Mountain, LLC. Beaudin said he would go by the businesses’ property boundaries when signs are erected. Town Manager/Planner Burbank said that there is a process in place in place for someone to get a Special Exception from the ZBA for a sign. Robinson agreed.

Robinson said the Planning Board should take a look at the LUPO and address ground mounted solar panel arrays. Perhaps solar panels should have their own classification. Maybe the Planning Board should develop setback rules that apply to signs in the sign ordinance portion of the LUPO, but at this point a ground mounted solar panel array is a “structure” by the definition in the LUPO and there are setback requirements for “structures” in the LUPO. If Beaudin thinks he has a compelling argument to get a variance, go to the ZBA and get one.

Chair Spanos said that he did not think the Planning Board should reenact new regulations pertaining to solar panel arrays because one person is doing something that a neighbor may or may not like. Town Manager/Planner Burbank said that he did not think that they are. Chair Spanos said that it is only one person who is asking for a change.

Town’s Response

Town Manager/Planner Burbank said that there is only one person right now, but setbacks for a structure are addressed in the LUPO and there is a path for Beaudin to do what he wants to do by appealing to the ZBA. Beaudin may be successful as he presented some compelling arguments tonight, however, to date Beaudin has not submitted a plan for his proposed ground mounted solar panel array in writing. From an enforcement standpoint the Town staff has been consistent and treat everyone the same.

Planning Board Discussion

Chair Spanos asked Beaudin what he was looking for from the Planning Board. Beaudin said that he was looking for some clarification on why the setbacks were inconsistent for various types of structures. Strickon said that she thought the regulations were very clear.

Fire Chief Beard asked if there was anything in the Master Plan about solar energy. Chair Spanos said that he did not remember seeing anything about solar energy, even in the energy chapter. [See Appendix A.]

Vice Chair Romprey said that there was something 3 or 4 years ago that came out about encouraging solar, but Vice Chair Romprey was not sure when. Solar panel arrays were not addressed in the Master Plan.

Beaudin said the Town voted to add a property tax exemption for solar power (Warrant Article #44, 2015). Town Manager/Planner Burbank said that it is very clear that the Town wanted to grant property owners property tax exemptions for the assessed value of the system.

Beaudin said that he was not here to argue about whether it is a “structure” or not. He originally came to speak with the Planning Board because he believed there was “a variable” in the Town’s setback requirements for different types of structures. What is a “structure” is defined.

Beaudin said that the Planning Board can say that a ground mountain solar panel array is not a “fence”, but it is still a “structure” according to the Land Use Plan Ordinance. You can say that a rock wall is not a solar panel, but it is still a “structure”. A sign meets the definition of a “structure” under the LUPO and it has no setback requirements. So in the absence of a regulation, really there is none. He was not even sure if he wanted to come to speak to the Planning Board because in the absence of a regulation he did not think the ordinance applied to his proposed ground mounted solar panel arrays. However, Town Manager/Planner Burbank is saying that the more stringent setbacks apply. When he looks at the regulations that pertain to signs, the signs do not have setback requirements. The setback requirements for all of the different zoning districts are not all fifteen feet (15’) either. It seems to Beaudin that the ground mounted solar panel arrays are being singled out for more stringent setback requirements than a sign, a retaining wall or a fence. Beaudin said, “That is the way I believe. If you are going to make it stringent, it really seems like [the ground mounted solar panel array] It’s being singled out. I’m willing to go to the ZBA. I don’t have a problem with that. That is probably where I’ll go next.”

Robinson said that when Beaudin said ground mounted solar panel arrays were being “singled out”, Beaudin was implying that everything that was not specifically addressed in the LUPO, therefore, was being “singled out”. Using that reverse logic, being “singled out” meant that if a specific type of structure was not mentioned in the LUPO it could be placed wherever the property owner wanted to put it. Beaudin said that was right.

What About Jungle Gyms:

Beaudin said, for example, if he wanted to put up a jungle gym for his children a jungle gym should be allowed because it was not specifically addressed in the LUPO. Strickon said a jungle gym would be an exception as an “amusement device”. Beaudin said that a children’s jungle gym is anchored to the ground, therefore, under the LUPO it is considered a “structure” and would need to get a Land Use Permit and would have to comply with the general setback requirements. Now should everyone who wants to put up a swing set or a jungle gym in their back yard go to the ZBA for a variance?

Strickon read a portion of the definition of a “structure”.

Structure – Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground excluding amusement devices.

Chair Spanos said that “amusement devices” are devices offered for hire to the general public, according to the ordinance.

Amusement Devices – Any use which offers for hire to the general public, access to structures, vehicles, mechanical or electrical contrivances or other facilities which are intended primarily to provide entertainment, amusement or recreation, and in which the patron is engaged on the premises as an active participant.

Beaudin said that there are many different types of structures that are anchored to the ground that should not require a permit or have to comply with the setbacks. Should they all go to the ZBA or come before the Planning Board? There are no provisions in the LUPO dealing with them specifically. There are a number of things you could put up in your yard that are anchored to the ground that could be what some person think is sculpture or art and their neighbors might not like it. Is it a structure because it is anchored to the ground?

Hettinger said, suppose a guy is looking to put up a ground mounted solar panel array but instead of two (2) five foot (5') panels high the array is three (3) five foot (5') panels high. Now you are talking about a structure that is fifteen feet (15') high.

Beaudin said "If the solar panel array is on the other guy's property, John, why do you care?"

Grant said Planning Board members would care because of the negative impact on the neighbor due to the close proximity of such a large structure to a neighbor's property boundary line.

Beaudin said that he "could agree with Grant, but one exception, that the Town has no regulation that prevents someone from doing that."

Grant said that there is a planning process in place where someone can appear before the Planning Board or the Zoning Board of Adjustment with a proposed project to get permission and where his neighbor gets an abutter's notice. Then the neighbor at least gets a chance to come before the Planning Board or the ZBA to argue about whether the property owner should be allowed to build a structure within the setback areas. A ground mounted solar panel array should be covered by the planning process under the definition of a "structure". Grant asked Beaudin, if it was your neighbor putting a structure on your property boundary line, you would want to have a say about that. Beaudin said, "I have." Grant said that will happen only if the project to put a ground mounted solar panel array within the setbacks comes before the ZBA needing a variance because it is a "structure" being built within the setback area.

Beaudin said that sometimes projects are exempt from all of those.

Grant said to Beaudin that if the ZBA hears no objections from his neighbors, (and speaking for myself, I would have no objections to it either, absolutely not), however, a structure like a ground mounted solar panel array measuring thirty-eight feet (38') long by ten and a half feet (10 ½') high should go through the ZBA hearing process to allow the neighbors an opportunity to weigh in about whether they object to having a structure of this size within two feet (2') of the property boundary line.

There was much confusion and much discussion about whether the Planning Board or the Zoning Board of Adjustment would approve a ground mounted solar panel array within the setback area or outside of the setback areas.

Town Manager/Planner Burbank said the proposed ground mounted solar panel array would need a variance. Grant said that because the ground mounted solar panel array is defined as a "structure" it needs a variance. Town Manager/Planner Burbank said Beaudin can appeal the administrative decision to require him to submit a Land Use Permit Application to build a ground mounted solar panel array within the setback area. Or Beaudin can submit a Land Use Permit Application to build a ground mounted solar panel array within the setback area. The Planning Department would deny that permit. Beaudin then would appeal that decision and apply for a variance from the ZBA. Beaudin would then go before the ZBA and argue his case. Abutters

would receive notice of the hearing and would have an opportunity to be heard. The ZBA would decide whether to grant the variance.

Chair Spanos said that the Board has in their packets, a chapter from Attorney Peter Louglin's Land Use Planning and Zoning Treatise describing "Permissive versus Prohibitory Zoning Ordinance" which basically says, even under permissive ordinance a given use may be allowed even though it is not explicitly allowed. Town Manager/Planner Burbank said the Planner tells the Applicant he needs a variance if he wants to put the structure within the setback area. The applicant has two options. He can make an administrative appeal to the ZBA that the Planner's decision was wrong or he can appeal directly to the ZBA for a variance.

Robinson said that he does not think that the Planner made the wrong decision. The Planner made the decision based on the requirements in the LUPO. It is written in this ordinance that a "structure" cannot be placed within the fifteen foot (15') setback area; a structure cannot be one foot (1') off the property line. The applicant then goes through the appeal process by requesting a variance from the ZBA as is written in the LUPO. He appears before the ZBA and says, "For these very compelling reasons, I want a variance". Then the ZBA has to decide.

Chair Spanos said that you are interpreting this ground based solar panel array as if it was the primary house itself. Chair Spanos said that in his opinion a solar panel array should be treated like an accessory use.

There was a brief discussion about structures and setbacks.

Vice Chair Romprey asked why Beaudin could not come before the Planning Board. What is the issue with that? Town Manager/Planner Burbank and Chair Spanos said it is not a commercial change of use or expansion of use. Town Manager/Planner Burbank said, hearing an administrative appeal or granting a variance does not fall within the Planning Board's jurisdiction or purview.

Beaudin said that his ground mounted solar panel array should be treated like an accessory building. The setback for an accessory building in the Rural Residential (RR) District is ten feet (10') which is about five feet (5') less than a primary building.

Several members said that the side and front setback for an accessory building that is less than one hundred fifty (150) square feet in size is ten feet (10') instead of fifteen (15') feet. The front setback for an accessory building in the Rural Residential (RR) District is twenty feet (20').

Vice Chair Romprey said that he thought it would be very interesting if this issue did go to the ZBA. If the ZBA decides to grant the variance and goes in Beaudin's favor, that would be good for Beaudin, but then it would also apply to every other lot in the rest of the Town. Town Manager/Planner Burbank said then if the townspeople do not like the ZBA's decision the Planning Board could address solar panel arrays as an amendment to the LUPO for next year and amend LUPO either to make the ordinance consistent with the ZBA decision or take the contrary view. It is all about the process that allows for input from impacted people. Vice Chair Romprey said he understands the process but three (3) years ago the Town was encouraging people to embrace solar power by adopting a property tax exemption for the assessed value of the solar panel array. Town Manager/Planner Burbank said that is true.

Strickon said, the Town did not vote to encourage property owners to build large solar panel arrays only one foot (1') foot from the neighbors' property boundary line.

Chair Spanos said that the Planning Board is not really going to discuss where they were going to do it. Beaudin if the Planning Board is going to address setbacks for solar panel arrays the Planning Board should also setbacks for signs as well because it is the same type of structure but signs have no setback requirements.

Grant said that what concerns him about this discussion is what if you turned this scenario around where you have your ground mounted solar panel array backed right up to your property boundary line but you directed the array around so you are getting your sunlight over your neighbor's land. What if your neighbor then decides they want to plant their large arborvitaes within one foot (1') of their property boundary line with you? They will be blocking your sunlight. There is no ability to appeal that. Unless you go through the same process both ways, either neighbor should have that opportunity to address this issue. Beaudin said no one is required to come before the Planning Board or the ZBA if they want to plant a tree on their property. They could plant a pine tree that grow 80 feet in the air and no one can do anything about it.

Grant said they can plant a tree anyway. They can erect a fence within one foot (1') or they can build a house or a structure within fifteen feet (15') of the property boundary line.

Beaudin said, yes his neighbor could plant a tree to block sunlight from getting to his solar panel array. That is why it is important to locate and direct the solar panel array in order to capture the most sunlight. If his neighbor does plant a tree and his tree limb grows over his property boundary, he as an abutting landowner, has the legal right to cut all of the limbs that hang over his property line off. Beaudin said he can hire someone to cut those overhanging limbs off.

Beaudin said that he would have turned the solar panel array the other way, but the sun does not go that way. Grant told Beaudin that he had no problem with Beaudin's proposed ground mounted solar panel array project if Beaudin's neighbors had no objections. However, in another case it could result in a completely different scenario.

Beaudin's Presentation Continues:

Treat the Ground Mounted Solar Panel Array Like a Sign, Not a Structure:

Beaudin said that in the absence of a regulation for ground mounted solar panel arrays there really is no regulation pertaining to ground mounted solar panel arrays. If the Town adopts a solar panel array regulation at the next Town Meeting, then after Town Meeting everyone who comes in to get a Land Use Permit after the change of a regulation has to comply with that regulation, but prior to that they do not have to.

Robinson and Strickon said that the Town does have regulations that apply - the Land Use Plan Ordinance applies.

Beaudin said "That it is an interpretive regulation." Beaudin said he does agree with Burbank about having to go to the ZBA for a variance, but he thinks "it is objectively being treated indifferently because it is a solar thing". Beaudin said he thinks it is unfair when the Land Use Plan Ordinance does not have a provision that deals with setbacks for signage and the Planning Board wants to subject his proposed ground mounted solar panel array to regular setback requirements. He think that his ground mounted solar panel array is being treated unfairly. "Someone could come in here with a sign tomorrow and they are not going to have to meet a fifteen foot (15') setback."

Grant said the applicant for a sign permit will not be asking to erect a sign that is ten and a half feet (10 ½') high by thirty-eight feet (38') long or three hundred sixty (360) square feet or as large as Beaudin's proposed solar array. Robinson does not agree with that.

Beaudin said to OJ, why won't you agree with that? Signs that have come in are not going to have to meet a 15 foot setback. It is not in the ordinance, are you going to make every sign that come in go before the ZBA? Beaudin said that the neighbor may not like the looks of the sign either.

Grant said that the impact on the neighbor would not be the same. Chair Spanos said that a neighbor might think it is the end of the world if someone puts up a sign he does not like.

Strickon asked if Beaudin could please "get off the signs. You are talking about your solar panels."

Beaudin said he was talking about being treated fairly within the regulations of the town.

Strickon disagreed and said that there are regulations in the Land Use Plan Ordinance that pertain to the proposed ground mounted solar panel array. The arrays are "structures" and must comply with the setback requirements.

Beaudin said that the regulations are subjective. Strickon disagreed and said the ground mounted solar panel array falls within the definition of a "structure"; a "structure" is defined in the Land Use Plan Ordinance.

Robinson said to Beaudin, first of all he keeps comparing the ground mounted solar panel array to a sign; the array is not a sign. Signs are in their own category. The Planning Board is talking about Beaudin's proposal to build a structure within the setback area. Robinson does not know how Beaudin can call the Land Use Plan Ordinance "subjective".

Beaudin and members of the Planning Board continued to argue about whether the Planning Board should consider Beaudin's proposal to build a ground mounted solar panel array as a "structure" with setback requirements or treat the array like they would a sign with no setback requirements.

Robinson asked Beaudin based on Beaudin's arguments, if someone could put in an outdoor wood burning furnace one foot (1') from Beaudin's property boundary line. Beaudin said that they can't because the State laws govern outdoor wood burning furnaces. Chair Spanos said that he knows there is a regulation but he doesn't know exactly the setbacks.

Beaudin said that there is a regulation that governs those. I'm just saying that I'm not trying to slide something under or in between the cracks, I'm just saying you are being subjective when you apply the setbacks for primary buildings because the Town LUPO does not really address ground mounted solar panel arrays. Beaudin said he is willing to go to the ZBA if the Planning Board requires him to, but he does not think the Planning Board members are being fair at all.

Hettinger said that in this package we got there was a sample for standardized residential solar permit application. What was the purpose of including that in here? Chair Spanos said that Bont got the form from another Town. Town Manager/Planner Burbank said that the form was included for informational purposes and has nothing to do with Lincoln's Land Use Plan Ordinance (LUPO).

Vice Chair Romprey said that he understands Town Manager/Planner Burbank's position, however, Beaudin made some valid points. Vice Chair Romprey said he was most concerned that on one hand the Town is encouraging solar power by granting property tax exemptions and on the other hand is the Town looking to put more restrictive covenants on solar panel arrays. Vice-Chair Romprey offered to work with Burbank on figuring out how to address setbacks for ground mounted solar panel arrays. He was not sure that the Town should require fifteen foot (15') setbacks. Chair Spanos agreed and did not think it is clear in the LUPO.

Town's Response

Town Manager/Planner Burbank said that the Town staff has been using fifteen feet (15') setback because Beaudin is proposing to build the ground mounted solar panel array in the Rural Residential (RR) District and fifteen feet (15') is the setback for that zoning district. That setback is not arbitrary; it is written in the LUPO. If we applied the definition of "structure" to an application for a sign permit that came in today we would apply the same process. We would look at what zoning district the sign would be going in (i.e., Village Center) and the front setback in that zoning district would be five feet (5'). He does not believe the staff is being "arbitrary".

Planning Board Discussion

Vice Chair Romprey said that there are various type of structures, some major and some minor. The Land Use Plan Ordinance seems to be wrapping all structures in the same group. Vice Chair Romprey said he does not think that is right. Strickon said that it may not be right or perfect, but it is what we've got. Vice Chair Romprey said, it is what it is, then.

Chair Spanos said that's what we have. Where do we want to go with this?

Robinson said that he thinks this is how ordinances change. The Planning Board becomes aware of a situation. The ordinance is clear that the setbacks apply, but the Planning Board does not think the setbacks are appropriate. However, the Planning Board cannot just deem the setbacks inappropriate and let people do what they want. The Planning Board can go back to Town Meeting with a proposed amendment to amend the LUPO to change the setbacks for ground mounted solar panel arrays. Meanwhile, the applicant has to deal with what the Town has by following the process, go to ZBA and get the variance.

Beaudin said that he has no problems going to the ZBA but he would encourage the Planning Board to review its definitions of "structure". Because if the Planning Board defines a structure as anything that is permanently affixed to the ground that could be one helluva lot of different structures: a playground fence, a sign, a piece of art that someone wants to put up in their back yard, a concrete post in the ground, a doghouse. "There's a ton of things that could be permanently affixed to the ground. So if that is the caveat by which you are identifying all structures, you are going to have more and more of this type of condition."

Members of the Planning Board discussed a number of different ideas about how to distinguish various types of structures. Robinson asked his fellow Planning Board members if they should wait until a situation like this comes up and then address it. There might be multiple types of solar devices, would they all be required to get Land Use Permits? Should the Planning Board just randomly ask applicants to come before the Planning Board for each type of solar device, like Beaudin just did? Should the Planning Board send them all to the ZBA? Or should the Planning Board come up with an amendment to the LUPO that clarifies the general scope of how the solar devices should be installed?

Hettinger said that the Planning Board should do research on what other towns have done about solar panel arrays. Vice Chair Romprey agreed.

Beaudin said, “It is nice to look at other towns, but you should be leaders not followers. I couldn’t disagree with you any more, you have to be leaders, not followers. You could do all your own homework, but you want to be in the head of the class, not the back of the class. But you want to be someone who is promoting solar, not restricting it because it is a green environmental thing and a lot of these town, it is all subjective. I truly believe...I listen to people on the street...and I have got to tell you this, a lot of people think that Lincoln’s regulations are getting too regulated. Well half of it...if you turn that corner, then you will start losing your regulations.”

Chair Spanos said that some towns have a three (3) acre minimum lot size. In those towns they can allow solar panels without disturbing their neighbors. The reason Lincoln has larger setbacks is because Lincoln has relatively small lot sizes; homes are on top of each other.

Vice Chair Romprey said, “This is similar to what we went through on the sign ordinance at least three times. We didn’t capture this. We didn’t capture that. We didn’t capture something else. We change it and something else comes to light. I think this is an endless battle.”

Fire Chief Beard said that he read online about a number of the things other towns are doing with their zoning ordinances to accommodate solar power. In many towns their rural residential zoning districts have height restrictions. In order to promote roof mounted solar power a number of towns are changing those height restrictions to promote solar power by allowing panel arrays to be mounted on roofs. Fire Chief Beard had not seen a lot of discussion about solar arrays on residential buildings yet. Most of what he read addresses solar arrays mounted on commercial properties. A lot of Planning Boards are loosening up the height restrictions to allow for roof mounted solar panels.

Beaudin said that the reason people see more roof mounted solar panel arrays than ground mounted solar panel arrays is that ground mounted arrays are more expensive because of the structure they have to build to support the system. The ground mounted solar panel arrays do not require a large support structure. They happen to make it nice because it is supposed to be environmentally friendly. They try to make the solar panels look “nice and shiny and pretty”.

Town Manager/Planner Burbank said that in the wind the solar panel array is a sail.

Chair Spanos said to Fire Chief Beard when you say commercial, you mean a commercial building, not necessarily a commercial solar farm, a for-profit solar farm.

Fire Chief Beard said that some municipalities are discouraging roof mounted solar panels because of safety concerns. For a house fire, first responders have to get on the roof and vent the roof. Consequently, the Fire Safety Code and the State Building Code are more restrictive for the roof mounted solar panel arrays than they are for ground mounted solar panel arrays because the ground mounted arrays are constructed away from the structure. Basically, you have a disconnect on the side of the building that is AHJ (Authority Having Jurisdiction) approved.

Beaudin said when someone builds a roof they build it for a snow load, not for a snow load PLUS a solar panel array load. If you have a roof mounted solar panel array, then you have to account for a snow load on top of a roof mounted solar panel array.

Vice Chair Romprey said that in the State of Florida the solar panel array requirements differ from county by county. Chair Spanos said that the roofs in Florida are not engineered for snow load so loading for a solar panel array becomes an issue.

Beaudin said that he thought the Planning Board should promote solar power rather than trying to restrict it. Beaudin said, “I hear everything you are saying and I appreciate your input, but I disagree with you and I really think it is being subjective considering the current regulations. I’ll do whatever you guys...you are the authority having jurisdiction and I’ll do whatever you say but I really think you are being subjective.”

Chair Spanos asked if there were any other thoughts from the Board. Hettinger said that the Planning Board should do some research into it.

Vice Chair Romprey said that Beaudin cannot go to the ZBA for a variance if he has not submitted a Land Use Permit Application. Town Manager/Planner Burbank said Beaudin has to go through the process. Chair Spanos said that Beaudin should fill out a Land Use Permit Application.

Robinson said the Planning Board needs to look at changing the Land Use Plan Ordinance by adding a section on solar panel arrays.

Vice Chair Romprey and Chair Spanos said they think there should be varying degrees for setbacks depending on what type of structure is being built:

- Outside fireplace
- Outside hot tub

Beaudin said that you can put a fence up one foot (1’) away from your property boundary line and then put your hot tub right next to the fence.

Recommendation by the Planning Board

Chair Spanos said the Planning Board members can give Beaudin a consensus, however, they cannot really vote. Beaudin said he is only looking for a consensus not a vote.

Chair Spanos polled the board and all members agreed that Beaudin needs to fill out an Land Use Permit Application. When it is denied he can go to the ZBA for a variance. All members agreed.

Beaudin’s Response

Beaudin said, “For the minutes and for the record, anything that is not dictated as far as setback, the more stringent applies. If something is not in the ordinance it needs to meet the more stringent requirements.”

Town Manager/Planner Burbank said that when Bont gets back, we will get exactly what it says and get it to you and get it to the Planning Board too.

Planning Board Plan of Action on Solar Panel Arrays

Robinson asked if the Planning Board wanted to set an agenda item to look at the Land Use Plan Ordinance (zoning ordinance) for a way to address the issues associated with solar power.

Chair Spanos said to wait until Bont comes back and see what she comes up with.

Vice Chair Romprey said that the problem is, if in fact the ZBA allows Beaudin to install the ground mounted solar panel array as he is presenting it with that large panel, the ZBA is going to be hard pressed to say “no” if anything else comes in that is similar to go against their decision for Beaudin. He knows the ZBA makes decisions on a case by case basis. Chair Spanos said that he does not think the ZBA will view the issue of solar panel arrays as limited to the Beaudin site. Town Manager/Planner Burbank said the ZBA would look at whether to grant a request for a variance to the setback requirements in the Rural Residential (RR) District.

Vice Chair Romprey what type of a structure would warrants the maximum setback for a primary structure. That is where the real issue is going to be. Town Manager/Planner Burbank said that needs to be defined by the Planning Board in an amendment to the Land Use Plan Ordinance and adopted by a vote at Town Meeting.

Garden Box

Cindy Rineer asked if a garden box is considered a structure because she drives it into the ground so it will not move. The garden box is not cemented.

Town Manager/Planner Burbank said if you pull out the steel bars the garden box can probably be moved. Arguably, the cement block garage that Beaudin has behind his house, if you have a big enough machine and enough time, it is movable. However, when you plant concrete in the ground now you have graduated to a “structure”. Town Manager/Planner Burbank said that is what needs to be defined because we are going to run into this problem all over town.

Discussion re: Changing the Land Use Plan Ordinance Next Year

Vice Chair Romprey said that the Planning Board should take a good look at cross view mitigation measures as well as screening measures for screening solar panels from the neighboring properties. Robinson said this is a good suggestion, but we cannot do that if it is not written in the ordinance.

Chair Spanos said, what if the screening blocks the sunlight? Robinson said if we go on the premise that if it is not written in the ordinance that they can do whatever they want, than that’s a problem the Town will not be able to address. Vice Chair Romprey said that the Town could request that they put screening in; that would go a long way towards influencing the neighbors to acquiesce. Robinson agreed but said that is an additional reason for the Planning Board to put more definitive language into the LUPO and not to rely on Town Manager/Planner Burbank and Bont to try to interpret vague language or to rely on the ZBA to grant variances. Vice Chair Romprey said that he thinks changes to the language of the LUPO needs to happen fairly soon. Chair Spanos said that changes cannot be made until the next town meeting. Robinson said the Planning Board can start at the next Planning Board meeting to draft the language for a proposed amendment and work it out and have the town lawyer look at it and review what other towns are doing, etc.

Vice Chair Romprey said that Beaudin did make a comment that caught his interest. I have actually been told the same thing, that a lot of people feel that Lincoln is getting really restrictive. Robinson said that there are a lot of people who do not think the Town is restrictive enough. I have heard complaints about RiverWalk, which I have been and continue to be a strong proponent of. People are saying that RiverWalk is a monstrosity that ruins Lincoln and looks terrible. There are people on both sides. I would not let the word on the street guide us too much.

Tanner asked if Beaudin put his ground mounted solar panel array one foot (1') from the property boundary line, what is to keep his neighbor from putting an eight foot (8') fence in front of it? Chair Spanos said that you are not going to say that Beaudin cannot put up a solar array and you cannot say the guy next door is not going to be able to put up a fence. Vice Chair Romprey said that is where the real issue is, because there is nothing to stop the neighbor from exercising his rights as well.

Fire Chief Beard said that in his opinion, Beaudin can go ahead and submit his application for a ground mounted solar panel array, but he does not think any Board should make a decision on solar panel arrays until they fully understand how solar panel arrays operate and what the requirements are like the electrical components, the esthetics, and a review of case studies of problems in other towns. Like when neighbors end up like the Hatfield and McCoy's, where one guy puts in a solar array and the next guy puts in an twenty foot (20') fence blocking his sun. We really should not shoot from the hip based on our very first case and then hope for the best. I think all the boards should be well versed and well educated about solar panels before any decision is made on it.

Tanner said that Bont learned that solar panel arrays have an extensive underground electrical components to them. Hettinger said that Beaudin's proposed ground mounted solar panel array is the size of a tractor trailer truck. It is also not just flat against the wall; it comes in ten feet (10') feet from the wall. It is ten feet (10') high.

Robinson said that is a good analogy. What if your neighbor parked a tractor trailer truck one foot (1') off your property boundary line? Town Manager/Planner Burbank said you would be angry. Robinson said, "Yeah, I kind of would be." Chair Spanos said "You can't do anything to prevent it." Grant said it would amount to a denial of the enjoyment of the use of the property next door. Town Manager/Planner Burbank agreed.

Chair Spanos said that you mean that you can't park a truck on your own land? Grant said that a truck is a movable thing, it is not a structure. Vice Chair Romprey said just put the solar panels on the side of the truck. Robinson said that he is not saying that a truck is a structure.

Town Manager/Planner Burbank there is a lot to talk about. If nothing else, I think that the Planning Board has a job next year.

Vice Chair Romprey said that array is a fairly large array and he was surprised at the size of it. Grant said it is twenty-two (22) panels. They were looking at nineteen (19) to twenty-one (21) panels for his roof.

Vice Chair Romprey asked what the output and capacity was from Grant's solar arrays. Was it enough to run his house? Grant, yes, it would be just about a break even for the year. "You stock up all your credits all the way through the summer and that carries you through the winter and it was pretty much a break even. On the one side of my roof is due south and almost 45 degrees, it is a perfect roof and no trees or other stuff."

Town Manager/Planner Burbank asked what the return on investment is for Grant. Grant said \$0 up front. The credits you get for it and the grants offset the cost. Others thought that they should invest.

Grant said that the ground mounted solar panel array is three hundred ninety-eight (398) square feet. If you are the neighbor, that is what you are looking at. It is bigger than the maximum

allowable size for a sign in our LUPO. Vice Chair Romprey said that in Grant's case the solar panel array is roof mounted and so the setbacks would not apply.

Grant said, yes, in his case, but if my neighbor was going to install a ground mounted solar panel array on my lot line, I would be somewhat upset, especially if I did not have an opportunity to express that opinion at a hearing. If there was a wooded boundary line and nobody is behind you and trees separate you by 75 feet, the neighbor would probably not have any objection to it, but if it is right next to your front lawn and that is where you have your flower beds, you don't want that ground mounted solar panel array right there. So you cannot just grant permission for one array. It has to be analyzed on a case by case basis and it would have to go through the same process every time.

Chair Spanos said the applicants are not going to come to the Planning Board. The applicants are going to the planning and zoning administrator - it will be an administrative decision. Vice Chair Romprey said that the Planning Board has to set the table with the ordinances. What requires a fifteen foot (15') setback and what does not. You really have to do that or you are going to be in hot water.

Town Manager/Planner Burbank said that for the next year we are stuck because we cannot change the ordinance until next March. Grant said that he thinks 100% that it is a "structure". Town Manager/Planner Burbank said it is a structure. Vice Chair Romprey said you are not stuck. The worst case scenario is to get the LUPO reworked for next Town Meeting and hope for something better.

The Planning Board discussed various ideas about how to deal with the ordinance as is and the powers of the ZBA.

Fire Chief Beard talked about his concerns about solar panel arrays, both roof mounted and ground mounted. Fire Chief Beard said within the codes you can have to have X amount of feet coverage on a roof. Then you have to have a break for firefighter access to be able to get to the other side of the roof. Access to get from the A side of the building to the C side. If you cannot access the fire from the C side, you have to be able to access it from the A side. Unfortunately there was an oversight when Rodgers covered the entire side of the roof but he does have access to the back of the building.

Chair Spanos asked if he could put a hole in the gable end to vent the roof. Fire Chief Beard said that he can but if the fire is in the middle of the building he is going to pull it to one end or the other. Basically you want to get above the fire and vent it to keep it in that general location. Because if you just pop open one end you will end up pulling the fire. Fire Chief Beard thought that even before the ZBA makes any decision, they should get to know about how solar works too. There is a lot to it, and it is not a fence.

Fire Chief Beard said that another good point is that a lot of Planning Boards have formed the same opinion about roof mounted solar panels. Because the panels are tilted at an angle and not on the ground, they do not form an impervious surface because they are not mounted flush to the ground. The only thing you calculate is the size of your Sonotubes® as impervious. That is a plus in his favor that you cannot use the impervious surface and require a storm water management plan and all this other stuff because really you measure the Sonotubes® and that is it. That is part of the education factor. There is a lot to it and he is just learning. He has to fight fires in these buildings.

Grant said that they are talking about solar shingles next. You re-shingle your house and the shingles are solar panels. He just reroofed his house with a 25 year life span. That is a big consideration if you are putting solar on your roof.

Fire Chief Beard said that Lincoln Green reroofed first and then put the solar panels on. If you look when you drive by there you will see they have gaps in the roof and it was not just for the skylight, it was for access because we cannot put the ladder truck on that side of the building so we would get to the parking lot side, access the roof, then go down on the other side to do a vent, but you can only vent where there are gaps in the solar panel.

Chair Spanos said that the gap might not even be in the optimal place to put a hole.

Fire Chief Beard said that there are still a lot more regulations when it comes to solar panels.

V. PUBLIC PARTICIPATION AND OTHER BUSINESS: Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

VI. ADJOURNMENT

Motion to adjourn at 7:45 pm.

Motion: OJ Robinson


Second: Callum Grant

All in favor: 4-0

Respectfully submitted,

Wendy Tanner,
Planning and Zoning Recorder

Date Approved: 4/26/2017


James Chair Spanos, Chairman

9

Energy

INTRODUCTION

Energy use, sources and consumption has increasingly become a concern throughout the state and region. Lincoln shall establish recommendations for best energy management practices as they relate to land use policy and development, encouraging more efficiency, fewer carbon emissions, and exploration of renewable energy sources



ENERGY

9

Introduction

The purpose of this chapter is to discuss energy efficiency, usage and conservation in Lincoln, and to encourage the reduction of energy consumption and costs. Establishing best management practices and adoption of new energy related technologies in future construction, renovations and maintenance of buildings and facilities is important to the economic sustainability of Lincoln. Land use policy can address issues regarding how Lincoln meets its energy needs, reduces greenhouse gas emissions, and faces the impacts that climate change may bring. This can be achieved through land use regulation (zoning), transportation policies (public transit, pedestrian and bicycling safety, and traffic flow), building design standards, and the efficient provision of public services.

New Hampshire State Statute RSA 672:1 addresses land use and planning, in particular the following two sections address energy and the environment:

I. Planning, zoning and related regulations have been and should continue to be the responsibility of municipal government;

III-a. Proper regulations encourage energy efficient patterns of development, the use of solar energy, including adequate access to direct sunlight for solar energy uses, and the use of other renewable forms of energy, and energy conservation. Therefore, the installation of solar, wind, or other renewable energy systems or the building of structures that facilitate the collection of renewable energy shall not be unreasonably limited by use of municipal zoning powers or by the unreasonable interpretation of such powers except where necessary to protect the public health, safety, and welfare;

In New Hampshire energy costs consume ten to fifty percent (10-50%) of household incomes, and total statewide expenditures on energy consume

eight percent (8%) of the State GDP. As New Hampshire imports nearly all of its energy from outside sources, most of this money leaves the state, paid to out-of-state companies. The statewide break down of energy expenditures by category is as follows:

- Transportation 44%
- Residential Buildings 27%
- Commercial Buildings 18%
- Industrial Buildings 9%

Most of New Hampshire's consumption of electricity, as estimated by the Energy Information Administration, is powered by nuclear energy sources, approximately fifty-one percent (51%), with coal and natural gas at fifteen percent (15%) and eighteen percent (18%) respectively, biofuels, hydroelectric and "other" make up the balance.

In 2012 the NH Office of Energy and Planning (NHOEP) received funding from the U.S. Department of Energy to identify new policies that would increase energy efficiency in buildings and develop a plan for implementing Energy Efficiency Resource Standards (EERS). The NHOEP has determined New Hampshire could realize more than ten (10) times the amount of energy savings that are being achieved through current programs with the adoption of EERS. Approximately thirty (30) states across the country have EERS in place or in development, including all other New England States.

An investment in energy efficiency and reduction in usage is an investment in the future. Potential cost savings of efficiency and reduced energy expenditures amount to billions of dollars state wide. In addition, the environmental and health impacts of reduced fuel usage are a major cost and quality of life factor that has yet to be adequately quantified.

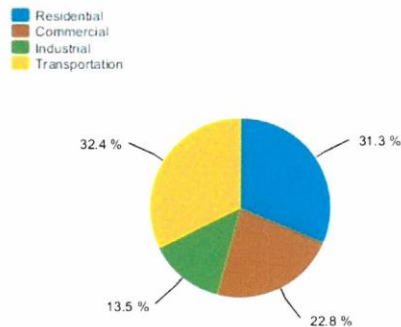
ENERGY

New Hampshire Climate Action Plan and Lincoln

The New Hampshire Climate Action Plan (CAP) created in 2009 by the Department of Environmental Services (DES) and the New Hampshire Climate Change Policy Task Force calls for a reduction in greenhouse gas emissions to eighty

Figure 9-1

New Hampshire Energy Consumption by End-Use Sector, 2014



Source: Energy Information Administration, State Energy Data System

percent (80%) below 1990 levels by 2050 with an interim goal of reducing these emissions to twenty percent (20%) below 1990 levels by 2025. Recognizing that the economic and environmental benefits of these reductions are mutually beneficial the CAP states:

"...a response to climate change and our economic future are inextricably tied to how we produce our energy and how much energy we use. Future economic growth in New Hampshire as well as mitigation of, and adaptation to, a changing climate will depend on how quickly we transition to a new way of living that is based on a far more diversified energy mix, more efficient use of energy, and development of our communities in ways that strengthen neighborhoods and urban centers, preserve rural

areas, and retain New Hampshire's quality of life."

Several of the CAP recommendations and strategies have direct relevance for Lincoln and its approach to energy in the future. The CAP specifically recognizes the need to preserve the forests for their many important economic and environmental benefits. Preserving this resource for working and recreational uses is critical to the economic future of Lincoln as well as the success of the Climate Action Plan. This goal has implications for land use policy and preventing incompatible and consumptive uses on forested land.

Maximizing energy efficiency in buildings is the most important overarching strategy in the CAP. Lincoln's lighting audit, office space renovation and insulation and window upgrades in the Community Center, and replacement with a more efficient heating system are all excellent examples of energy efficiency measures that will save energy and lower costs. These measures can be implemented in all town-owned buildings and encouraged in new construction and renovations of privately owned structures through education and the adoption of amended zoning ordinances and performance standards. Examples of energy efficient building measures that reduce heating, cooling and lighting loads include:

- State of the art weatherization of buildings and homes, including insulation and windows.
- Installing programmable thermostats and control systems to reduce energy loads when buildings and homes are not in use.
- Purchasing Energy Star equipment.
- Use of low energy usage lighting such as LED.
- Take advantage of ambient energy sources such as passive solar design and landscape attributes such as shade trees.
- Integrate water saving technologies.
- Integrate renewables and low CO₂ sources.

ENERGY

- Refurbishing buildings rather than destroying them to build new ones.
- Creating local requirements or incentives that exceed the State Energy Code to facilitate the building of units that use less energy and are cheaper for the users to operate annually for no additional construction costs.

Transportation patterns and use have a substantial impact on the energy use within the community. The consumption of fossil fuels can be dramatically reduced by changing the transportation options and mindset. Land use policy has a huge impact on the transportation patterns in a community; by allowing mixed uses and encouraging more compact development the use of vehicles will be reduced. Other ways in which transportation goals can have an effect on energy efficiency include:

- Providing safe alternative transportation Routes throughout town and linking with other communities where possible.
- Adopting a no-idling policy for appropriate municipal vehicles.
- Promote ride-sharing and trip reduction.
- Facilitating the establishment of home businesses to reduce commuting through upgrading zoning ordinances and increasing the availability of high speed Internet service throughout the town.

Looking Forward

Overall, energy efficiency is achievable by a combination of all the conservation and efficiency measures. The first step towards realizing the benefits of energy efficiency will be to recognize the need and adopt goals and strategies to promote future best practices. Initial steps towards implementing energy efficiency measures and policies include:

- Conduct an energy audit and assessment for all municipal buildings, operations and vehicles.
- Adopt energy efficiency plan for all municipal property and operations.
- Research funding sources for energy efficiency projects.
- Analyze and reduce barriers to the implementation of renewable and alternative energy sources in all sectors of the community.
- Develop an education and outreach campaign that assists homeowners and property owners in making efficient energy choices.
- Review zoning and building regulations to encourage the use of energy efficient practices in all sectors of the community.
- Create an Energy Savings Trust Fund to be used in the future for energy saving initiatives.