

LINCOLN PLANNING BOARD
REGULAR MEETING MINUTES
WEDNESDAY, OCTOBER 11, 2017 – 6:00PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH

APPROVED

Present: Chairman Jim Spanos, OJ Robinson - Selectmen's Representative, John Hettinger, Carole Bont, Ron Beard (alternate & Fire Chief)

Members Excused: Vice-Chairman R. Patrick Romprey, Paula Strickon, Callum Grant (Alternate) & Norm Belanger (Alternate)

Members Absent: None

Staff Present: Town Manager and Town Planner Alfred "Butch" Burbank, and Jane Leslie, Administrative Assistant (recorder)

Staff Excused: None

Guests:

- **Jayne Sue Ludwig** – resident and property owner of 12 Pleasant Street (Map 113, Lot 092), PO Box 103, North Woodstock, NH 03262 and member of Board of Selectmen.
- **Paul J. Beaudin II** – resident and property owner with Kathryn J. Beaudin of 2 Louis Lane, Lincoln, NH 03251 (Map 117, Lot 069), and Louis Lane (Road) (Map 117, Lot 069001-00-00000), PO Box 872, Lincoln, NH 03251-0872 and member of Zoning Board of Adjustment.

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

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

Vice Chair R. Patrick Romprey, Callum Grant (alternate), Norman Belanger (alternate) and Paula Strickon were excused.

Ron Beard was seated.

- II. CONSIDERATION** of meeting minutes from:

- Planning Board Draft Minutes for September 13, 2017

Representative O.J. Robinson objected to line 226 of the minutes. He wants the minutes to say, "it was determined these pages were submitted, but were not necessary to view, since the applicant was not asking for a waiver." The sentence, as written, makes it sound like the Applicant did not fill the forms out completely, but he did. Bont just did not copy both sides of the forms when she made copies provided to the Planning Board in their packets.

Motion approve the minutes of September 13, 2017 as amended with a change to line 226.

Motion: John Hettinger. **Second:** O.J. Robinson **All in favor:** 5-0

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

None.

IV. NEW BUSINESS:**A. Review information about Solar Panel Arrays and Wind Power Systems.**

Chair Spanos asked the Planning Board if they wanted to discuss the Town's goals for solar and wind power. Bont said that the Planning Board members should decide whether they wanted to discuss zoning of the elements of solar panel arrays and wind power systems separately. A number of different options used by other municipalities were shared so the Planning Board could see how other municipalities attempted to regulate them. Bont sent the Planning Board samples and information so they could consider the available options through discussion and decide whether they wanted to proceed further with regulating solar and wind.

Chair Spanos noticed some towns do not require any building permits required for rooftop mounted panels, but they do for free-standing panel arrays.

Town Manager/Planner Burbank said that in Lincoln, for roof mounted solar panel arrays, the rooftop structure already takes up part of the lot. Adding a roof mounted solar panel array does not increase lot coverage for the small lots. However, because the size of the average house lot is so small in Lincoln that adding a ground mounted panel array would affect the surrounding lots and the overall look of the community. He agreed that there should be some kind of zoning regulation for ground mounted solar panel arrays for the Town of Lincoln to fall back on, because right now the Town has nothing but setback requirements.

Bont pointed out that there are also fire safety issues that arise with the current style of roof mounted solar panel arrays in the event of a fire. Consequently, Fire Chief Ron Beard has been researching and considering the potential impact of roof mounted solar from a fire safety perspective.

Fire Chief Beard said that his main concern for fire safety is that the roof needs to be constructed with sufficient strength to support the heavy roof mounted solar panel array structure. With a new house the support for such a system has been engineered into the plans. However, a lot of older homes do not have adequate support. The roof mounted solar panel arrays also have to be mounted with spaces between the roof mounted solar panel arrays to allow for firemen to get access to the roof in case of fire for ventilation. Robinson asked whether the State Fire Code and/or the State Building Code had regulations that pertain to roof mounted solar panel arrays. Fire Chief Beard said they did, however, that does not mean the State Fire Code or Building Code were complied with.

Bont said there are two commercial buildings with roof-mounted solar panel arrays in town that she is aware of. (1) Rodgers Ski and Sport; and (2) Lincoln Green.

Bont said that although Rodgers Rodger's Ski and Sport asked her if they needed a Land Use Permit to add a roof-mounted solar panel array system, she told them that under the Land Use Plan Ordinance (LUPO) in its current form, they did not need a Land Use Permit; she did not issue a Land Use Permit for Rodger's Ski and Sport because the solar panel array was roof mounted. There was no change in footprint, no addition or change in areas of the heated space, no change in height, no change in the number of bedrooms or number of fixtures connected to water or sewer so no Land Use Permit was needed. The Rodgers Ski and Sport shop is located on property known as 5 Railroad Street (Map 112, Lot 014) owned by Great Stone Face Skier, LLC, PO Box 68, Lincoln, NH 03251. Town Manager/Planner Burbank reflected that, in retrospect, the Town probably would have been better served if the Town had made the property

owner get a Land Use Permit and at the completion of the project had the owner and the installer of the solar panels sign off on a Construction Control Affidavit that they had installed the roof mounted solar panel array system in compliance with the State Fire Code and the State Building Code requirements. That way the Town would have something in writing on the permit that required the owner to install the panels in accordance with the State Fire Code and State Building Code, meaning the fire department could adequately ventilate the roof for fire-fighting purposes in case of a fire.

Bont said that she understood from Fire Chief Beard that the Lincoln Green's roof mounted solar panel arrays were also "concerning". Lincoln Green is a privately owned Senior Apartment Complex designed for senior adults sixty-two (62) years old and older or disabled persons eighteen (18) years old and older. [See 24 Lincoln Green Road (Map 113, Lot 072) owned by Avesta Lincoln Green LP, c/o AHEAD Property Management, 262 Cottage Street, Suite 116, Littleton, NH 03561.] The roof-mounted solar panel arrays are mounted very close together.

Hettinger said that a roof mounted solar panel array should be attached to the trusses/beams/rafters of the building, which is critical in rough weather. Hettinger thought that the investment in solar panels seemed unwise. Hettinger said that he understood from reading the literature distributed to the Planning Board in their packets that it would take twelve (12) years to pay off the system before you would start earning money from a solar panel array, after the rebate combined with a thirty percent (30%) federal IRS tax credit of fifteen thousand dollars (\$15,000) to get a six (6) Kilowatt roof mounted system. Payback is \$1,258 per year. In Hettinger's opinion, it would be wiser to invest that money in Dow Jones & Company stock.

Chair Spanos said that another problem with a roof mounted solar panel array is when your roof is halfway through its lifespan, that would interfere with your investment as well. Hettinger said both the roof and the solar panel array system have limited life expectancies. The roof only lasts fifteen (15) years. The life expectancy of the inverters is only fifteen (15) years and then those also have to be replaced. Bont said that one source she listened to did not recommend the installation of a roof mounted solar panel array system unless you had just gotten a new roof. Given the present stage of solar technology, the fifteen-year life expectancy of a roof and a roof-mounted solar panel array are about the same; when you replace your roof, you replace the solar panel array at the same time.

Town Manager/Planner Burbank said there is nothing other than the State Building Code that applies to the roof-mounted systems. The Town does have some impact on the ground-mounted systems. In Lincoln, that means that if we gave them a Land Use Permit to install the ground mounted system, we would get the installer to sign a Construction Control Affidavit swearing under penalties of perjury that they installed the solar panel array in accordance with the State Building Code and the State Fire Code and that would be the full extent of the Town's involvement. Without the adoption of the RSA that allows local enforcement of the State Building Codes, the Town of Lincoln cannot do anything else with roof mounted systems. The State Building Code is the absolute minimum base standard for all building, including solar panel arrays. If the Town wanted anything more stringent than what is required in the State Building Code, the Town would have to adopt RSA 674:51 or RSA 47:22 and hire a building inspector among other things.

**TITLE LXIV
PLANNING AND ZONING
CHAPTER 674
LOCAL LAND USE PLANNING AND REGULATORY POWERS
Building Codes
Section 674:51**

674:51 Power to Amend State Building Code and Establish Enforcement Procedures. – The state building code established in RSA 155-A shall be effective in all towns and cities in the state and shall be enforced as provided in RSA 155-A:7. In addition, towns and cities shall have the following authority:

I. The local legislative body may enact as an ordinance or adopt, pursuant to the procedures of RSA 675:2-4, additional provisions of the state building code for the construction, remodeling, and maintenance of all buildings and structures in the municipality, provided that such additional regulations are not less stringent than the requirements of the state building code. The local legislative body may also enact a process for the enforcement of the state building code and any additional regulations thereto, and the provisions of a nationally recognized code that are not included in and are not inconsistent with the state building code. Any local enforcement process adopted prior to the effective date of this paragraph shall remain in effect unless it conflicts with the state building code or is amended or repealed by the municipality.

II. Any such ordinance adopted under paragraph I by a local legislative body shall be submitted to the state building code review board for informational purposes.

III. The local ordinance or amendment adopted according to the provisions of paragraph I shall include, at a minimum, the following provisions:

(a) The date of first enactment of any building code regulations in the municipality and of each subsequent amendment thereto.

(b) Provision for the establishment of a building code board of appeals as provided in RSA 673:1, V; 673:3, IV; and 673:5.

(c) Provision for the establishment of the position of building inspector as provided in RSA 673:1, V. The building inspector shall have the authority to issue building permits as provided in RSA 676:11-13 and any certificates of occupancy as enacted pursuant to paragraph III, and to perform inspections as may be necessary to assure compliance with the local building code.

(d) A schedule of fees, or a provision authorizing the governing body to establish fees, to be charged for building permits, inspections, and for any certificate of occupancy enacted pursuant to paragraph III.

IV. The regulations adopted pursuant to paragraph I may include a requirement for a certificate of occupancy to be issued prior to the use or occupancy of any building or structure that is erected or remodeled, or undergoes a change or expansion of use, subsequent to the effective date of such requirement.

V. No municipality or local land use board as defined in RSA 672:7 shall adopt any ordinance, regulation, code, or administrative practice requiring the installation of automatic fire suppression sprinklers in any new or existing detached one- or 2-family dwelling unit in a structure used only for residential purposes. Notwithstanding any provision of law to the contrary, no municipality or local land use board shall enforce any existing ordinance, regulation, code, or administrative practice requiring the installation or use of automatic fire suppression sprinklers in any manufactured housing unit as defined in RSA 674:31 situated in a manufactured housing park as defined in RSA 205-A:1, II. Nothing in this paragraph shall affect the ability of an applicant for a local land use permit to include the installation of fire suppression sprinklers pursuant to RSA 674:36, IV, or affect the validity or enforceability of such inclusion.

Source. 1983, 447:1. 1989, 70:1. 1990, 71:3. 2002, 8:10. 2003, 245:7. 2008, 38:1. 2011, 269:1. 2013, 207:2, eff. Sept. 8, 2013.

Town Manager/Planner Burbank said the solar array panels are definitely an issue because the Town does not have anything in the zoning ordinance to guide their installation. Town Manager/Planner Burbank said the Town would need to adopt the RSA that allows towns to locally enforce the State Building Code if the Planning Board wants the Planning and Zoning Department to try to enforce something stricter than State Building Code

Chair Spanos said if all of the solar panel arrays are all professionally installed then the onus is on the contractor to make sure system is installed properly. Town Manager/Planner Burbank said the level of professionalism associated with the solar panel array installation probably varies because the installers are not licensed. Chair Spanos said that most of the solar system arrays would be plugged into the “grid” so the NH Electric Co-op must be inspecting what goes into their system. Town Manager/Planner Burbank said, “But do they? I don’t know that.” Fire Chief Ron Beard said that the electric company does inspect a solar panel array system before the owner is allowed to tie in, however, the electric company does not look to see how the panel array system is mounted. They are looking at the connection to their electrical grid system. As a side comment, Town Manager/Planner Burbank said he is not aware of anyone going off the grid and using just their own solar power in Lincoln. He does know of a couple of cases in Thornton where they have had a couple of households go off the grid. It is very rare for someone to use entirely solar power for their power needs where they are not feeding into the existing power grid system. Chair Spanos said the NH Electric Co-Op seems to collect a lot more information on a solar panel than the Town of Lincoln collects for a full building.

Again, Hettinger wondered why someone would make the investment in solar power, and suggested that the Town staff share the Town’s PowerPoint Slide #39 spelling out the poor economics of solar power with applicants. That slide alone could deter their decision to go solar.

Sally and Gary’s Initial Solar PV Costs

Slide 39

- Assuming Sally and Gary get:
 - 4.8-kilowatt roof-mounted, grid-tied PV system
 - Your costs and incentives may be different

Component	Approx. Cost
16 solar panels- 300 watts each, with racking	\$7,000
Inverter, disconnect and electrical materials	\$4,500
Installation labor, permits, overhead and support	\$7,700
(approx. \$4 / watt)	Subtotal: \$19,200
Less: NH PUC rebate	(\$2,400)
Less: 30% IRS tax credit (after rebate*)	(\$5,040)
(approx. \$2.45 / watt)	Net cost: \$11,760

Chair Spanos said if no one wants to invest in Level I technology, the US will never get anyone to invest in Level II technology. Bont said perhaps the people who want to invest in solar power just want to be good citizens by converting to more energy-efficient and sustainable source of energy with a lesser carbon footprint.

Robinson reined everyone in by saying that there are two (2) means of collecting solar energy:

- (1) roof-mounted solar panel arrays; and
- (2) ground-mounted solar panel arrays.

The roof-mounted solar panel arrays are regulated by the State Building Code. He does not see the Town voters wanting to attach any other burdens on home-owners for roof-mounted solar panel arrays. For instance, a roof mounted solar panel array is similar to a roof-mounted air-conditioning system. After reading the materials Robinson said that the roof mounted solar panel array should be treated as just an additional mechanical system for the home. For example, a roof-mounted solar panel array is similar to a roof mounted air conditioning system. Does the Town want to regulate those by making people fill out applications for Land Use Permits? No. The solar panel array is one part of the mechanical systems of the building.

B. Issues:

1. How Will the Array Impact the Neighbors?

a. Roof-Mounted vs. Ground Mounted.

Bont said again that the big question is “How will this impact the neighbors?” Roof-mounted rays are less likely to cause a negative impact on the neighbors or abutters than a ground mounted solar panel array. That’s where zoning may need to get involved.

b. Size of the Array.

Bont said the size of the array is an issue as well. Bont said that the solar contractor determines the size of their array. The contractor looks the property owners’ current usage of electrical power and then tells the property owner how many arrays or how large the panel array they will need to cover their electrical needs. If the building is multi-family housing with three (3) units then the size of the solar panel array triples.

c. Sale of Excess Power to the Grid

Chair Spanos wondered if someone could sell solar power off a lot that gets a lot of sun and if the Town should regulate the commercial use of solar panel arrays. Chair Spanos said that he thought most lots in Lincoln would not be large enough to facilitate a ground-mounted solar array system.

d. Town’s Only Limitations are Height and Side, Front and Rear Setback Areas

Bont said that in reviewing what other communities have done, some communities are fine with ground-mounted systems in the back yard, or where the panels cannot be seen by others or do not disturb others. In Lincoln, the only limitation on ground mounted solar panel array systems the Town has now is that ground mounted arrays are structures prohibited from the front, side and rear setback areas. Perhaps the height is also limited although the language pertaining to “height” talks about thirty-five feet (35’) to the “primary eave” on the uphill side which may or may not really apply to a ground mounted solar panel array. Robinson agreed that the other towns have focused on setbacks and height.

e. Excluded Square Footage from Density Calculations – Lot Coverage and Impervious Surfaces

Robinson said that in one Town they excluded the square footage from any density calculation,

regarding either lot coverage by impervious surfaces. A ground-mounted solar panel array is really not an impervious surface – it's an impervious surface X number of square feet above the ground, but it is not like impervious pavement.

Ordinance Proposals:

Robinson thinks there are three (3) things the Planning Board should focus on:

- (1) Exempting the square footage from both maximum lot coverage (i.e., density and impervious surfaces);
- (2) Setbacks; and
- (3) Height.

Robinson said that some towns had an eight-foot (8') height limit for ground-mounted solar panel arrays. He did not think that standard was workable. The panel arrays have to be off the ground to begin with. Spanos said another town prohibited the bottom of the panel from being more than ten feet (10') off the ground. It all depends on what people want. Burbank said they will probably just have to drive around town, pick a lot you are familiar with that has south or southwest exposure and then consider whether a certain size solar panel array you are considering would bother the neighbors. Would you want to drive by and see that?

(4) Solar Panel Easements

Hettinger said, what if you put up a solar panel array and then your neighbor puts up a tree to shade your solar panel array? Chair Spanos said that is the risk someone takes if they install solar panel arrays. The Planning Board does not want to insinuate that your neighbor is not going to be allowed to landscape his property with trees because he might block his neighbor's sun needed by his neighbor to power his solar panel array.

Chair Spanos asked if the Town needed to incorporate the idea of solar panel easements because what if someone planted a tree purposely to obstruct someone else's solar panel array? Do we need to clarify that property owners have to meet the front, side and rear setback requirements with their solar panel arrays?

(5) Define Solar Panel Array as a "Structure" and Therefore Setbacks Apply

Robinson said that all the Planning Board would have to do is:

- a. Include the definition of a ground mounted solar panel array in the ordinance and say that it is characterized as a "structure", so it would have to abide by all of the setback rules.

(6) Height Limits

Robinson said "But do you want a thirty-five-foot (35') height limit on ground mounted solar [panel arrays]? Some of these houses have five-foot (5') setbacks." A height of thirty-five feet (35') in such densely developed areas of town could block the sunlight from getting to the neighbors' properties. Bont said she had an application for a solar panel array that was approximately seventy feet long by twelve feet high (72'X12'). Beaudin said that the solar panel array he was looking at was about three to four feet (3'-4') off the ground and the panels themselves were about eight feet (8') high. So the whole ground mounted solar panel array was a total of about twelve feet (12') high. It depends on the whatever the best arrangements.

Should Solar Panel Array Operated Lights Be Treated Differently?

Beaudin said that on the interstate there are lights operated with Solar Panel Array Power. The panels are three feet by three feet (3'X3') or two by two feet (2'X2'). Planning Board should consider another matter: What about the State's solar panel array operated lights that are twenty feet (20') in the air? Why would the Town want to restrict the use of that more efficient source of power?

"Aesthetics" is Too Subjective a Standard

Town Manager/Planner Burbank said the primary concern about solar panel arrays is all visual aesthetics. What do you want your Town to look like? Currently Town staff is interpreting the Land Use Plan Ordinance (LUPO) as requiring them to look at the leading edge of the panel and making sure the solar panel array is wholly out of the setback areas. Some of the solar panel arrays are designed to track the sun; they move with the sun. Chair Spanos commented that there is a solar panel array on NH Route 127 that tracks the sun and the solar panel array is "enormous". Beaudin also said that evaluating the impact of a solar panel array is based on a subjective personal preference. Subjective personal preferences play a large part in making this decision. For example, he does not mind the look of solar panel arrays, however there are other things like freezers, generators, or propane tanks that, while still functional, are not pleasing to his eye. While some people may think these components of a modern home are ugly, they are necessary.

Live Free or Die Argument – It is My Land, Let Me Do What I Want with It!

Beaudin said it irritates him when he and other people cannot do what they want with their property. Solar is a "green and upcoming thing". Beaudin wanted to install a ground mounted solar panel array because he wanted his energy costs to be fixed as he gets older. In future years, his Return on Investment (ROI) would happen when the power charges from the NH Electric Co-Op start to spike. NH Electric Coop has some of the highest power charges in NH. Beaudin said that if his abutting neighbors do not have a hard time with his proposed thirty-two-foot-long by ten and half feet (32'X10.5') high ground mounted solar panel array, does it really make a difference to the general public if he installs one?

Should Not Be Allowed to Block Others' Light:

Beaudin said he looked at the regulations for the Town of Franconia and some other municipalities in the North Country. The regulations for solar panel arrays are not really that stringent in this area. There are some NH RSAs that are designed to prevent you from blocking someone's light if they have a solar system, like a spite fence.

Wait for State Guidance?

Bont said the State is hiring an experienced Planning Consultant to focus on the whole subject of solar power. According to NH OEP website, the Consultant is supposed to develop:

- (1) a menu of definitions and ordinance language that address key issues that arise when siting ground-mounted solar systems. These issues include, but are not limited to, aesthetics, land-use considerations, wetlands, residential vs. commercial vs. agricultural permitted uses, etc., and

(2) a model solar ordinance for a typical NH community that primarily covers ground-mounted solar systems up to 30 MV. This may include rooftop mounted, but those are typically already allowable.

Maybe the Planning Board would want to wait and see what the state consultant comes up with.

Discussion re: Proposed Changes to Land Use Plan Ordinance:

Town Manager/Planner Burbank agreed that as Land Use Plan Ordinance (LUPO) stands now, it does not address solar panels so whether to grant a Land Use Permit for a ground mounted solar panel array is too much of a staff judgment call, which is not good. Maybe it would be enough to add a definition to the Land Use Plan Ordinance (LUPO) making it clear that a ground mounted solar panel array is a “structure”.

Bont said in the Land Use Plan Ordinance (LUPO) under “Height Requirements”:

- In the General Use (GU) District, Village Center (VC) District, Rural Residential (RR) District, and the Mountain Residential (MR) District the maximum structure height requirement shall be **thirty-five feet (35')** “measured from the primary eaves on the uphill side of the structure”.
- In the Small Business District (SBD), Village Residential (VR) District and the General Residential (GR) District, the maximum structure height shall be **twenty-five feet (25')** to the primary eaves on the uphill side of the structure.

Bont said the problem with these height requirements is that the Land Use Plan Ordinance (LUPO) is not clear that the height requirement as written applies to a structure that does not have eaves.

Bont said that in addition, the second subparagraphs under “Height Requirements” says:

- In the General Use (GU) District, Village Center (VC) District, Rural Residential (RR) District, and the Mountain Residential (MR) District there should be **no more than four (4) floors used as living space** above or below ground level as measured through any vertical plane of the building.
- In the Small Business District (SBD), Village Residential (VR) District and the General Residential (GR) District, there should be **no more than three (3) floors used as living space** above or below ground level as measured through any vertical plane of the building.

Bont said, again, it is not clear from the language in the Land Use Plan Ordinance (LUPO) that the height requirement applies to anything other than a building-like structure.

Beaudin pointed out that the technology for solar is getting smaller, not larger. Now consumers can get shingles, sheeting, and other building materials that take up less space than the older style shingles or sheeting as part of the siding (called box solar) or roof shingles.

Roof sheathing or sheeting - The wood panels or **sheet** material fastened to the roof rafters or trusses on which the shingle or other roof covering is laid.

<http://completedesign.cc/client-resources/dictionary-of-construction-terminology/596-roof-sheathing-or-sheeting>

Beaudin said those shingles or sheeting may serve well down south and maybe not as well up north where there is less sunlight. The shingles and sheathing collect the solar power during the day and then uses the power during the evening. Car manufacturers are also making breakthroughs with vehicles, like the Tesla. A Tesla car that use solar power only has thirty-two (32) moving parts whereas a regular automobile that uses oil and gas has close to six hundred (600) moving parts. Tesla owners from Massachusetts charge their cars up here at the solar power charging stations behind RiverWalk for an hour and then can drive all of the way home. Of course, a Tesla costs a lot more money than more traditional type of car even taking into account the fuel savings. On the other hand, solar energy is something a lot of people in Town support; they supported solar power by voting to grant the property tax break for houses operated using solar power.

Chair Spanos asked if the members of the Planning Board believed the Town had enough regulation in their current Land Use Plan Ordinance (LUPO) or whether they want clarification or whether they wanted to make comprehensive changes. In response, Hettinger said the biggest worry is if someone obstructs his neighbors' views with a solar panel array and the Town will get complaints and the neighbors will get upset. What if someone puts up a huge solar panel array and blocks his neighbor's view? What if someone puts up a solar panel array and then his neighbor puts up a building or tree that blocks the sun? Hettinger said that in his opinion, the roof mounted solar panel arrays are not a problem other than those concerns raised about fire protection. It is the ground mounted solar panel arrays that are the problem. A comment was made that perhaps people could create of a Solar Skyspace Easements. (See NH RSA 477:49-51.)

Robinson said he would like to put into the zoning ordinance:

1. **Definition for a roof-mounted solar panel array system;**
2. **Definition for a ground-mounted solar panel array system;**
3. **Clarify that a roof-mounted system is considered part of the mechanics of the building and does not need a permit.**
4. **Clarify that a ground-mounted system is considered "structure" and is, therefore, subject to setback and height requirements for the zoning district they are located in.**

Town Manager/Planner Burbank suggested that the Planning Board attempt to build a consensus among members of the Board about what the maximum height of a ground mounted **commercial** solar panel array system should be versus a ground mounted **residential** solar panel array should be height-wise using today's technology? Then Burbank asked if the Planning Board wanted to base the maximum height of the solar panel arrays on the maximum allowable building height so that it would be consistent with whatever amendments the Planning Board wanted to make to the part of the ordinance that addresses the current maximum building heights of twenty-five feet (25') or thirty-five feet (35') to the primary eave?

The Planning Board talked about the structure and wind considerations for a taller panel, such as a thirty-five foot (35') panel. Beaudin said that for a taller solar panel array, the builders would build the array in the form of an "H" and anchor it with concrete Sonotube® Builders Tube® concrete forms.

Town Manager/Planner Burbank said a definition might be all the Planning Board needs to worry about right now. Bont suggested the Planning Board tweak the height requirement section so it

is clear that an overall ground-mounted solar ray height should be a maximum of 25 feet from the ground level to the top of the top edge of the panel. The Planning Board members all agreed that all they should worry about right now is setting a height restriction for ground mounted solar panel array systems.

Bont said the Planning Board should also address the size of the solar panel array. Bont said that if someone builds a ground mounted solar panel array system at the site of a single-family residence that is beyond the size that is needed for a single-family residence, then the solar panel array becomes “a business” or a “commercial use”, requiring Site Plan Review. Bont said she could talk to the woman at the state (Deandra Perruccio, Energy Analyst for the NH Public Utilities Commission, Sustainable Energy Division), to find out how much energy in a solar array constitutes a commercial operation. Robinson said he would agree that anything in excess amount of x square feet becomes a commercial structure and would not be allowed in the residential areas.

Hettinger said we should consider that solar arrays will block neighbor’s views out their picture windows. How are we going to handle that situation? Town Manager/Planner Burbank agreed, however, he said that one could argue that trees and clotheslines would have the same effect.

Bont said that according to the Franconia Zoning Ordinance, the Franconia Zoning Board of Adjustment (ZBA) may grant a special exception for small scale power generation facility, provided that the applicant obtains Site Plan Review approval from the Planning Board and “...the proposed use has no detrimental effect on the views of the Town”. Only one small facility is granted per lot, and the proposed use and intent must meet the spirit of the zoning ordinance. That would give your neighbors a chance to speak up, but it would also mean you have to go to the ZBA and the Planning Board for approval. In Town Manager/Planner Burbank’s opinion Franconia’s zoning regulation for solar power is pretty strict.

The Planning Board talked about the expense to notify abutters and the public. A newspaper notice is \$150. It costs just over \$7 for every notice to every abutter. Robinson said if the Planning Board set a square footage limit and said that anything under this limit is “residential” versus “commercial” perhaps that would remove the requirement to notify all abutters.

Burbank said that the issue of everyone’s subjective opinion about the aesthetics of allowing ground mounted solar panel arrays on the lot next door is still an issue.

Beaudin said a property owner should still be able to do whatever he/she wants with their property. Hettinger agreed, as long as you do not lower the value of your neighbor’s property.

“Good fences make great neighbors,” said Burbank, quoting Mark Twain, “But you’ve got to keep the good side of the fence toward your neighbor.”

PUBLIC DISCUSSION – A COMPLAINT ABOUT THE LACK OF ENFORCEMENT OF THE ZONING ORDINANCE

Jayne Ludwig said she believes in public zoning because people do not always respect others. She said that she has been talking about the enforcement of the Town Zoning Ordinance for two years now and the ordinance still has not been enforced.

Ludwig said she came to the Planning Board meeting tonight because some people came to her house on Pleasant Street to complain. They had erected some “Dead End” signs on Pleasant Street. Ludwig said the Planning Board is responsible for “enforcing” the ordinances. Her first

complaint is about the lack of enforcement of the ordinance pertaining to privately owned dumpsters. Ludwig said that “we pretend that the dumpsters are locked but they are not”. Her second complaint is about the lack of enforcement of the sign ordinance which is part of the zoning ordinance.

Speaking to her second complaint concerning the signage, Ludwig said that her neighbors are concerned because they cannot see onto the Main Street (NH Route 112) from Pleasant Street. Ludwig said she brought this complaint up at Board of Selectmen’s meetings to no avail, several times. There are cornstalks attached to one stop sign and there are very tall sunflowers growing up the other one. People coming out of Pleasant Street and turning onto Main Street/NH Route 112 cannot see far enough past these obstructions to pull out safely into the road (i.e., Main Street/NH Route 112). Ludwig said this intersection is dangerous and has resulted in people almost getting hit. Ludwig said she has been complaining about this matter forever and is not getting anywhere. On Pleasant Street “everyone turns around and backs into people’s yards.” Ludwig said her neighbors on Pleasant Street finally put up their own “Dead End” signs on Pleasant Street, which has resulted in about 60% less traffic on Pleasant Street which she saw as beneficial to her neighborhood. Ludwig complained that instead of making the owners of the businesses on Main Street take their cornstalks and sunflowers off the stop signs so drivers could see better to enter Main Street from Pleasant Street, the Code Enforcement Officer removed the handmade signs “Dead End” signs that she felt “were actually working for the road”.

Fire Chief/Health Officer/Code Enforcement Officer Beard said he did not remove any signs, but he did call the person who put up the signs to ask him about the signs. Town Manager/Planner Burbank explained that the “Dead End” street signs were not legally erected. Ludwig replied that neither were the “For Sale” signs or cornstalks or sunflowers.

Chair Spanos interrupted the discussion and asked the participants to finish up the discussion about solar power before continuing with public comments under “Public Participation and Other Business”.

Town Manager/Planner Burbank agreed to research the definitions of height and square footage limits for residential and commercial areas.

Beaudin said that when he was doing research, one thing that irritated him was that the rest of the Planning Board was thinking the ground mounted solar panel arrays were considered “structures” and he was not. Signs can be higher than a solar panel, which does not make sense to him.

- 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.

Ludwig said that if one person can complain about handmade signs that are actually working and get them taken down, why are her one hundred complaints getting ignored? People cannot see to get out onto the street.

Fire Chief/Health Officer/Code Compliance Officer Beard said that former Fire Chief Clifton (Cliffy) Dauphine was told to take down the signs because the signs were not authorized by the Town and were not permitted. Dauphine has to get permission from the Town to erect signs. Ludwig said she thought the “Dead End” sign had been up for over a year, but Chief Beard said that the complaint came in today and Dauphine said he had recently put the sign(s) up within the last week or so.

Town Manager/Planner Burbank agreed and said that Ludwig is correct; it is a dangerous entrance from Pleasant Street on to the Main Street. It is a hazard, but no more of a hazard than any other area in town. Town Manager/Planner Burbank said he found the cars parking on Main Street to be the biggest problem, more so than the cornstalks or flowers.

Ludwig asked if the Planning Board can fix the ordinances so they can be enforced. Hettinger asked Ludwig what she thought the ordinances would say to cause that change?

Town Manager/Planner Burbank said that it is not legal for the cornstalks to stay on the stop sign. The police chief has the authority to put up short-term “No Parking” signs.

Bont said that the people who own “The Top Notch Hostel” over in Woodstock are new owners of the property in question. She thinks Myles Moran who owns Udderly Delicious Ice Cream planted the sunflowers.

Town Manager/Planner Burbank said that people are totally thumbing their noses at the sign portion of the zoning ordinance, particularly with regard to sandwich signs and feather flag signs. When the sign ordinance was created, there was not enough input from the businesses in this Town. In his opinion, the sign ordinance is a horribly written ordinance. It was not well researched among the members of the business community nor was it well-thought out, given the historical nature of this community, especially Main Street. For example, one business owner on Main Street indicated that he is going to put up four feather flag signs no matter what, even though he is only allowed and permitted for two.

Beaudin agreed that there are a lot of signs out there. He knows that the business owners say they need the signs. When drivers are traveling thirty miles per hour (30 mph), a sandwich sign catches their view for about a second. Beaudin said he thinks the signs look terrible, they are a traffic hazard, and they cannot be that effective.

Town Manager/Planner Burbank told the members of the audience that they are free to talk to business owners like the Purple Tomato about their signs and tell them how their signs are not working. The owner will tell you that his sign is going to stay more than twenty-five feet (25') from his door because the sign brings in business.

Chair Spanos said no one should be able to obstruct the public’s right of way.

Beaudin said he is concerned that not everyone in town is being treated the same way.

Town Manager/Planner Burbank said the State’s right of way stops at the granite curb. Most of those signs we are talking about are on the Town’s right of way. Members of the NH Department of Transportation (DOT) told the Town that every sign that goes up cannot block the Route 112 traffic. But that would be the “de-approval process”, and not how you enforce the sign ordinance after a sign was approved years ago.

Bont said there were two feather signs approved for David Rodgers. The owner of Nachos Mexican Grille has been told to take down his signs and he has not. The Nachos owner keeps putting up his blinking sign after being repeatedly told to take it down. The Town's only option for enforcing the sign ordinance is to go to court over all of the unpermitted signs.

Bont reminded the Planning Board that the Planning Board has to **revise the sign ordinance, because the sign ordinance has to be content neutral per the US Supreme Court case Reed et.al. v. Town of Gilbert, Arizona**. Anything related to content of the sign is has to go. Robinson explained, saying that you should not have to know what is on the sign to regulate it. It is the size and location we need to regulate.

The Planning Board raised the question of neon signs. Are they allowed? Whether or not signs are neon are not related to the content. Movie theaters and gas stations can use LED signs. Robinson said the LED language is content-related so it does not pass muster. We have to either say, "LED signs are allowed" or "LED signs are not allowed."

Bont said we have language that relates to construction signs and directional signs we have to get rid of. Robinson said that if signs help public safety, we want those signs. We have to figure out what we can regulate and what we cannot.

Bont said the sign ordinance has content-related language that distinguishes between home occupation signs, informational signs, merchandise signs and industrial building signs. However, we do have content-neutral language re: exterior neon signs which are prohibited. Neon signs inside buildings that you can see from outside can be up to 4 feet long.

The other sticky wicket will be off-site signs, because offsite signs advertise a business that is not located on the same property as the sign. The sign ordinance says the owner of a business can get a special exception from the ZBA if the business is not visible from the main road. Tourist attractions are allowed one off-premise sign by special exception. (That language is definitely content related.) Otherwise, all off-premise signs are prohibited.

Town Manager/Planner Burbank is also concerned that even if the Town revises the sign ordinance to be content-neutral, the Town "will not be able to take sign regulation to the next level in Lincoln", because the Town does not have the political will to follow through by filing cases against its citizens in court as necessary to effect enforcement. He says that people see the flaws and are thumbing their noses at the regulation.

Beaudin thinks the business owners are thumbing their nose because no one has ever been taken to the court or fined for a sign. Town Manager/Planner Burbank said there is a fine on the off-premise sign, but in order to levy the fine the Town has to take the business owner to court.

Bont, looking at the zoning ordinance, said there is a fine of \$50 per day, after seven days of notice until the violation is corrected and after 60 days the fine increases to \$100 per day. The Selectman may consider seeking injunctive relief from the courts with the violator paying all legal fees.

Further investigation showed that the last update to that ordinance was two years ago.

Beaudin said that the Town voted at a meeting that all signs must comply to the town's ordinance by January 1, 2017; it speaks a lot to our court of law. Bont verified the facts. After the Town voted to make all signs comply with the Town's sign ordinance by January 1, 2017, basically, the US Supreme Court essentially threw out every municipal sign ordinance in the United States.

The Town's sign ordinance needs to be compliant with that US Supreme Court holding in the Gilbert case before the Town attempts to enforce it before a court of law. Town Manager/Planner Burbank said that if he were an attorney, he would not take a complaint to court with this ordinance. (It's a freedom of speech issue.)

In summary, Town Manager/Planner Burbank said:

1. We will look at Dead End streets in towns and the Board of Selectmen could work with the police to decide how they should be labeled.
2. We also need to work harder on revising the sign ordinances to address the signs on Main Street.
3. We are getting steady complaints from residents on Maple Street about nonresidents parking on their street to visit the businesses on Main Street, but we are not really getting many other complaints.
4. The parking issue at the corner of Maple Street and Main Street has not been resolved there, as the public will move barrels the police place to prevent parking.

Beaudin said it would be nice to know whether or not the signs that are up now are permitted.

Fire Chief/Health Officer/Code Enforcement Officer Beard said that some of these signs are expensive, and the Town does not want to be sued for damages. Robinson said if we approved the sign, we cannot turn around and make them take it down. We do not have an acceptable approval process in place right now.

Town Manager/Planner Burbank brought up the sign enforcement issue in the Town of Conway. Burbank said the Planner in Conway has three (3) people on his own staff just to handle sign enforcement and complaints. Conway is constantly busy with people just popping signs up wherever they want to. The districts collectively voted to enforce the signage. Burbank said he does not see the process working any differently here in Lincoln, because there is so much pressure associated with the sign issue. By enforcing the sign ordinance, the Town will be sticking its necks a little bit out too, because the Town could be taken to court by the unhappy business owners as well.

Ludwig said if the Town cannot afford to enforce the zoning or the sign ordinances, then we need to get rid of the ordinances.

Town Manager/Planner Burbank said he heard Ludwig's complaint. The staff will start with the businesses on Main Street. and US Route 3. "We'll see what happens. We have to follow through."

Chair Spanos said, "Are you really going to spend time on something that's illegal?" Chair Spanos and Robinson said that in their opinion, the stuff (cornstalks and sunflowers) that obstructs the right-of-way and illegal "Dead-End" signs are a higher priority. Town Manager/Planner Burbank said he was looking for input.

VI. ADJOURNMENT

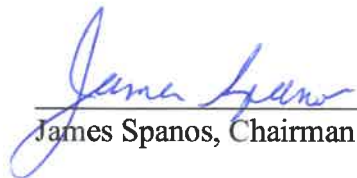
Motion to adjourn at 7:24 pm.

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

Respectfully submitted,

Ellyn Gibbs
Recorder

Date Approved:



James Spanos, Chairman