**MINUTES**

**Workshop Meeting**

**Sanbornton Planning Board**

**Meeting Date and Time:** Thursday, May 3rd, 2018 at 7:00 PM

**Meeting Place:** Meeting Room, Sanbornton Town Offices

The meeting was called to order by Don Bormes at 7:00 PM

**Roll Call**

Regular Members present: Don Bormes, Selectman John Olmstead, Will Ellis, Justin Barriault, Dick Gardner

Alternate Members present: Debra Schneckloth

Alternate Members absent: Jody Slack

**Others present at the meeting:** Town Planning Assistant, Steve Laurin

**Approval of draft Planning Board minutes from 4/19**– Justin Barriault made a motion to approve the draft minutes of 4/19. Selectman Olmstead seconded the motion and the motion passed unanimously.

**New Business**

**a.** S**olar farm energy ordinance legal opinion –** Christine Fillmore of Gardner Fulton & Waugh was present to answer the Board’s questions regarding solar energy. Selectman Olmstead reminded the Planning Board that the Board of Selectmen have approved two hours of the attorney’s time plus travel. Dick Gardner stated that there is a party discussing a possible application for a commercial solar farm but one has not been formally presented yet to the Planning Board, though a PILOT agreement has been made by the company and the Board of Selectmen. He also stated that the solar energy ordinance created by the Planning Board this year was a combination of ordinances taken from other towns.

Christine Fillmore was provided with questions from the Planning Board previously which she previously answered in email. She stated that the Board can decide if they want to allow the email memo to be a public document after the meeting tonight. The questions answered in the email and then discuss further at the meeting were as follows:

**1. Under the new ordinance, does any ground-mounted solar energy system require a variance from the ZBA, i.e. a commercial installation in an agricultural zone?** Attorney Fillmore responded No, not the way the ordinance is written now. If other parts of the application do not comply then a variance may be needed, but the fact that it is a commercial system in an agricultural zone does not warrant a variance alone.

**2. Is additional approval needed in order to change the poles on a scenic road or in a historic district?** Attorney Fillmore stated that there is nothing in Sanbornton’s Zoning Ordinance in Article 9 which requires additional approval from the Historic District Commission before a permit can be granted. Dick Gardner stated that they are an advisory committee that can give an opinion on a potential project or building. Attorney Fillmore stated that in this case the Commission would not be able to enforce anything. She also stated that there is nothing in the Zoning Ordinance that requires any specific review on a scenic road, however if someone proposes to do work around as scenic road involving tree trimming or removal then they would need to come to the Planning Board, but there are many exceptions. If a public utility needs to cut limbs because of service interruption then they can do so without permission beforehand. Selectman Olmstead stated that Eversource had to replace three poles in Town and the BOS signed off on this. If the poles are changing then the Selectmen need to be notified but the company does not need to come before the Planning Board.

**3. Who is the applicant in this case – the lessee or the property owner?** Attorney Fillmore stated that the Sanbornton Zoning Ordinance lists the applicant as the “legal owner” of the property. In the case of a small, roof-top solar system, then the homeowner would usually be the applicant, but a large solar energy system would probably use the developer as the applicant. In that case, the land owner would provide a letter stating that the lessee is able to apply on their behalf. Dick Gardner asked if the owner assumes liability if a project is abandoned, and Attorney Fillmore responded Yes. Dick Gardner also asked if the subdivision request would need to come from the landowner and Attorney Fillmore responded Yes. Steve Laurin asked how he would know if an officer of a corporation has the authority to apply, and Attorney Fillmore responded that a certificate can be provided by the company stating that the officer has the authority to act.

**4. Does the Planning Board have the authority to charge an applicant for legal advice needed to properly process an application?** Attorney Fillmore responded Yes, and suggested that the Planning Board let the law firm know when questions are related to a specific application so that they can properly bill for those hours later.

**5. Is the Planning Board able to control off-site impacts of a site plan application, such as inter-connectivity with overhead wires?** Attorney Fillmore responded No, as this is related to power coming *out* of a development and the statute does not cover that. If power needs to be run across someone’s private property then that may trigger Planning Board review depending on if poles are considered a structure or a minor installation. She stated that poles do not count as structures if they are part of a public service.

Dick Gardner asked Attorney Fillmore what changes may need to be made to the ordinance as it is written now. She responded that the existing ordinance does a good job of explaining what is needed for an applicant to present to the Planning Board. She noted that section F(3) of the ordinance requires an applicant to furnish state and federal permits, but reminded the Board that it cannot require those permits at time of application, though the approval of the application can be conditional upon receiving the permits. Steve Laurin noted that section D(1) states that a “land use professional” must sign the submitted site plan, but suggested that this be changed to “surveyor”.

Attorney Fillmore stated that the Board may want to consider changing the ordinance to prohibit solar energy systems from certain zones, but would probably not be able to limit roof-mounted solar as it may not be considered a reasonable restriction. For ground-mounted solar, she stated that it does not have to be permitted in every zone and the Board could be restrictions on sizes in certain zones, if it is not the best use of that zone. Some options would be bigger setbacks or size limits in certain zones. She stated that the Board needs to decide what things they care about in certain zoning districts and then tailor the plan around those things. Attorney Fillmore noted that the ordinance states, in D1(L) “applications must include…any other exhibits or data that the Planning Board may require”. She stated that the Board can require additional information, but cannot create any other requirements for an applicant.

Will Ellis asked if screening requirements could be more extensive for some zones and Attorney Fillmore responded Yes. Don Bormes stated that impervious surface is an issue the Board needs to keep in mind, as Concord recently rejected a solar installation application because their Planning Board claimed that the panels qualified as impervious surface. Steve Laurin stated that there is a lot coverage limit in Sanbornton and the reason is to prevent too much impervious surface.

Don Bormes noted that the State RSA mandates that municipalities cannot put unreasonable limits on renewable energy systems. Attorney Fillmore left the meeting at 8:15pm.

**Other Business**

**a. Discussion of OSI solar session at recent Planning & Zoning Conference –** Debra Schneckloth recapped some of the issues discussed at this session. She explained that conditions should be put on these projects so that they stay with the Planning Board and do not have to go to the Zoning Board, and noted that first responders and the fire department should be trained to deenergize arrays in the case of an emergency. She stated that the new model ordinance produced by the Office of Strategic Initiatives will soon be available on the OSI website. Debra also stated that she feels the solar energy ordinance should be fixed sooner rather than later by way of a special town meeting, and Dick Gardner stated that Attorney Fillmore did not see that many issues with the ordinance as written now. Steve Laurin suggested making changes to the site plan review regulations which can be done through public hearings with the Planning Board. He noted that homeowners have been complaining about the cost of site plan review which is required for installing solar energy systems. Don Bormes stated that this can be waived if needed, and Justin Barriault stated that being able to waive parts of an application are not clear to a resident reading the instructions. Selectman Olmstead noted that the State legislature will be voting soon on possibly increasing the number of megawatts that are allowed on one acre and that the Planning Board should be aware of that.

**b. Providing attorney memo to public** – Andy Sanborn asked for a copy of the attorney memo to the Planning Board as it has already been discussed during this public meeting. Dick Gardner made a motion to allow the attorney’s memo to be available to the public. Justin Barriault seconded the motion and the motion passed unanimously.

**c. Election of PB officers –** Don Bormes stated that he does not have the time to be the Planning Board chair; other members stated that they do not have the time either. Dick Gardner made a motion to reelect Don Bormes as Vice Chair. Justin Barriault seconded the motion and the motion passed unanimously. Dick Gardner noted that he learned at the Planning & Zoning Conference that an alternate member seated at the beginning of the case (in the absence of a full member) needs to be seated throughout the case until its end.

**d. Request from BOS regarding ordinances or regulations related to light –** Selectman Olmstead asked if any Planning Board members are familiar with any regulations that would prohibit the use of light at a greenhouse on Upper Bay Rd, which abutters have complained about to the BOS. Justin Barriault asked if the Board of Selectmen have asked the owner of the greenhouse to come in and talk about the issue rather than just talking to the neighbor. Selectman Olmstead stated that the BOS can request this. Steve Laurin stated that the Planning Board may want to consider putting some kind of regulation in the Zoning Ordinance related to light glare. Justin Barriault stated that a greenhouse would not come before the Planning Board with a site plan though, because a greenhouse is considered agriculture and not commercial, and the Board needs to decide what it considers commercial.

**Planners Update**

**a. Correspondence regarding solar energy system –** Steve Laurin read a letter from concerned abutters, related to a possible solar energy farm which the Planning Board has not seen an application for.

b. Discussion regarding applicants being present at hearings – Will Ellis stated that he would like to see applicants at public hearings when their case is being heard. Steve Laurin stated that applicants do not have to be present for voluntary merger requests, such as at the last meeting. Dick Gardner asked if the Planning Board can legally require applicants to be here, and Steve Laurin said that he will look into it.

**Meeting adjourned at 9:30 pm. The next meeting is scheduled for Thursday, May 17th.**

Respectfully submitted, Audry Barriault