



# Town of Eddington

906 Main Road Eddington, Maine 04428

## PLANNING BOARD

June 22, 2023

5:30 p.m.

## MINUTES

**CALL TO ORDER:** David Peppard called the meeting to order at 5:34 pm.

**ROLL CALL:** Members present were David Peppard, Craig Knight, Susan Dunham Shane, Scott Newhart, and CEO Rick Leavitt. Heather Grass has an excused absence.

**MINUTES:** Minutes of May 23 – Motion to accept as written Susan DS, 2<sup>nd</sup> Scott N. 4/0  
Minutes of May 30 - Motion to accept as written Susan DS, 2<sup>nd</sup> Craig K. 4/0  
Minutes of June 1 – Motion to accept as written Susan DS, 2<sup>nd</sup> Scott N. 4/0

**NEW BUSINESS:** Troy Pearl Building Permit Application for 73 Forestry Lane, Eddington  
Rick Leavitt sent copies of Mr. Pearl's application for a Non-Conforming Structure Rebuild to the Board for review in advance of this meeting.

Mr. Leavitt presents: House and garage on slabs. Has full electric, water, and septic. The problem is it is only 20' from the water. Whole house is rotted as is garage. However both sit on concrete slabs that are in good shape, with no cracks or crumble. All the applicant wants to do is tear down the existing structures and build new at the exact same size.

Scott N. asks: With new roof pitch? Rick L: yes, raise the roof pitch steeper so snow will slide off better.

Craig K: Adding 2<sup>nd</sup> story? Rick L: no.

Shows pictures to Board. Did send to Board but not all got or were able to open.  
Susan DS – this is a pretty good size lot. There is room to move. Rick L. agrees good size, however the request is made because it is the least environmentally dangerous. He has brought this request to us to see if Board feels applicant must move it back. If tear down and move back will have to destroy slabs and move all utilities. Right now there is no earthwork.

David P: by regulation can he just rebuild? Susan DS: Yes, as Rick pointed out in his finding of fact Chapter 5, section 504 Non-Conforming Structures and regarding raising the roof pitch article 504.1.2 covers this situation. She reads aloud from section 504. The applicant seems to be within the section.

Rick L. One more wrinkle – septic is right behind house so if it had to be moved back the septic would have to be relocated too.

Susan: Did you include the tax map? No. Susan: This lot is 2+ acres? Rick: yes and frontage is 200'

David P. 2 questions. #1 Why is this coming before us? Rick: because it has to. In Shoreland Zoning any house in this zone has to be moved back as far as practicable, taking into account the land layout, building existing, and other elements "as determined by the Planning Board." David P. - so there is no way CEO can just decide this? Rick: No. Rick can tell people what is allowed. But if a tear down and rebuild is planned then it must go to Planning Board. A

lot of camps have no foundation so if tear down then have to move back. In this case there is a foundation so it becomes a matter for the Planning Board to decide, since it is an adjustment to the standard rule.

Craig K. and Susan DS both comment that breaking up current slabs and moving utilities could be more environmentally dangerous. Susan DS: what is water source? Rick L: Has well.

David P. question #2 Can applicant add on to this if he goes back from the water? Rick L: He could actually add on now because he is under the 1000 sq ft. rule. But doesn't want to.

Susan D.S Was asking about width and depth and water source because if did move back septic and well would then have to conform to the 100' / 100' circle rule, yes? And this currently probably doesn't conform to that rule, right? Rick: Oh heck no. Septic is right behind the house. Susan DS: I have no problem with this application as it stands.

**Craig Knight: I move to accept the application for the rebuild. Scott Newhart 2<sup>nd</sup>  
Chair calls for a vote: 4/0**

Rick Leavitt will write up the permit and attach the minutes when they are approved.  
Susan DS: Who is agent for the applicant? Geoffrey Johnson. Susan DS says thank you.

Rick L asks: No one got the photos of this application that he sent? Scott said there was an early email that could have had the photos but he didn't or couldn't open. Then received 2<sup>nd</sup> e mail with application form and letter.

Rick L: Quick Point - Section in our Shoreland Zoning that says if a house is destroyed or removed by more than 50% of its value it can be replaced as long as applicant applies or has a permit within 18 months. Rick has had 2 cases where more than 18 months went by and neither was fault of applicant. He brought it up because he has just rewritten Shoreland Z for Clifton, Dedham, and Lucerne. One of the sections was regarding this situation. He also ran it by DEP too. DEP said what should happen is there should be conditions attached. Therefore in the rewrite Rick included conditions such as pandemic, court orders, court legal issues, and insurance problems. Presented to head guy in Augusta and he okayed it. Should consider putting it in our Shoreland Ordinance. Rick then gives examples of situations in Clifton and Dedham where these conditions came into play.

Susan DS: You made these changes to the most recent version of the State Shoreland Ordinance?

RL: Yes. Susan DS: We need a new copy of this current version. The one our Board was working on updating was from when Gretchen Heldman was still on the Board (typist note: 2016). Could Rick L. please give this Board a copy and if possible red print the changes the other towns made to the State Ordinance. Rick L. says he think has his red copy. Dedham's has been approved by DEP. Clifton and Lucerne still have to vote on theirs and then send to DEP.

RL : Thinks he still has copy with his red notes and red notes from DEP reviewer when he sent it to them. Susan DS: Same reviewer as 2016? RL: Yes, but now gone.

Susan DS: The Dedham Shoreland Ordinance is all in black and totally approved and ready to go, right? RL: yes. SDS: So we could just read it and if we like it just adopt it? Yes. Chapter 1000 just needs to be tweaked to fit our town and add what else might be needed. Rick does feel that all structures should come before Planning Board. Board agrees. Susan DS asks Rick L to please send a copy of the Dedham SZ Ord to Denise and she can send it to Edd. Board members. Rick L. leaves

**UNFINISHED BUSINESS:** BD Solar Application for proposed Solar Development  
Applicant is represented by Sean Thies of Haley Ward Engineering

Chair David P. "Continue review of the application from BD Solar Eddington for the proposed Solar Development."

Craig K: Ask Sean T. if State has stopped holding back on applications for solar.

Sean T. asks for clarification.

Craig K: The state had so many applications, like 20 at once so they stopped taking applications.

Sean T: No, they didn't stop taking applications they just extended the review period. For example, used to be about 6 months that determination needed to be completed. With overwhelming applications it allowed the State something like another 90 days to approve the applications. That is the only thing he can think is what Craig is asking about.

Craig reported he heard that a project by a company in Canada was held up by Covid rules and the town employee he contacted said that 2 weeks ago she received notice that the State had lifted restrictions and the company would be proceeding with a 700 acre solar farm in Bradley.

Sean T. replies: could be not DEP, could be PUC

Susan DS: Yes, she saw notice in paper re DEP project in Bradley and spoke with Town manager or CEO and received confirmation there was a project planned. Also compliments Sean (as BD Solar) for largest building permit listed in recent Ellsworth American issue. She asks Sean T the 90 acres of land listed is the acreage of solar panels or total piece but less is solar panels.

Sean T: Land is 90 but using 15 to 20 acres of solar panels. As a general rule of thumb the ratio is 4 acres per megawatt.

Susan also reports Ellsworth American issue June 15<sup>th</sup> article called "Power Bills Go Up To Cover Renewable Energy Costs" had a great explanation of stranded costs and really great net energy billing explanation.

Starting Point for Review:

Left off at 107.5 Security Plan and Requirements

Susan – her notes say okay. Only appeared in book 1 Sean thinks it is part of the Fire Plan and Emergency Response. Scott thinks it's in signage and contact info Sean thinks in same narrative in Book 2. Scott satisfied that it is covered in several places. In narrative re signage, etc.

**Scott Newhart: I move we accept section 107.5 Security Plan and Requirements as presented. Craig Knight 2<sup>nd</sup>**

**Susan asks for amendment: add the words "in the narrative"**

**Motion finally reads "I move we accept section 107.5 Security Plan and Requirements as presented in the narrative"**

**Chair calls for a vote: 4/0 in the affirmative**

107.6 Fire Prevention and Emergency Response

Susan DS: This is in Appendix I in Book 2 had replacement info. (January book)

David P: Reads from plan requirements in our Solar Ordinance.

Susan DS: Response by applicant is boilerplate and does not talk about BESS in either version.

However, the boilerplate narrative does hit all the subsections 107.6.1 thru 107.6.4

Scott N.: There is note at end that "Prior to construction a section will be added to the Prevention and Emergency Response covering the BESS Systems" So this would make us good with the

plan pending specifics closer to construction and if the Bess Systems are used, since they are still in the air.

**Scott Newhart: Move 107.6 Fire Prevention and Emergency Response Plan is accepted pending updates prior to construction and inclusion of BESS if used.**

Susan DS asks to confirm that this motion also covers subsections 107.6.1 thru 107.6.4?

Scott N: Thinks it is okay to say 107.6 and all subsections pending prior to construction an update be provided to include to the Code and Fire Chief and Town Office. It is suggested the motion be restated in new form. Susan suggests using the word “condition” so that in a word search of the record using the word “condition” we will be able to find conditions easily. Scott N. original motion is withdrawn.

**Susan Dunham Shane restates the motion: Move that Section 107.6 Fire Prevention and Emergency Response plan is accepted as presented with the condition that prior to construction the CEO and Fire Chief and Town Manager will be provided with updated entire Emergency Response Plan.**

**Scott Newhart 2<sup>nd</sup>.**

**Chair calls for a vote: All in favor 4 /0**

107.7 Emergency Shutdown Plan and Requirements

Chair reads requirements

Susan DS: her notes reference to that in 107.6 and Applicant in Appendix I. Scott N. agrees

**Susan Dunham Shane: Motion to accept reference to this in Solar Ord Section 107.6 and find 107.7 is fulfilled by Appendix I in application.**

**Craig Knight 2<sup>nd</sup>**

**Chair calls for a vote: All in favor 4/0**

107.8 Glint and Glare

**Scott N: Move that 107.8 Glint and Glare assessment has been conducted in accordance with the Federal Aviation Administration policy.**

**Susan DS: 2<sup>nd</sup>**

**Chair calls for a vote: All in favor 4/0**

107.9 Certification of EPA Toxicity Characterization Leaching Procedure (TCLP) shall be provided, along with proof that all electrical equipment used at the facility must be UL-listed.

Susan DS: The response to this is that this section is only for waste and it is not applicable. But the Decommissioning Plan does state that the BESS is hazardous waste. So she is confused.

David P. Could we accept it as written with an amendment for a plan for disposal of those items will be in the Decommissioning Plan.

Susan DS: Requests Board read applicant response to 107.9– it is in Book 2

Sean T: Problem when he read it, and had to check with environmental folks in his office, you can't do a certification without waste to test. If don't have waste can't test it. Would have to destroy a panel to create waste.

Susan DS: I understand your response. But what you talk about are solar panels which exist in a steady state and are considered non-hazardous.

Sean T: When they put together this response they were not planning on BESS.

Scott N: But you do have transformers, right? However, he is thinks the concern is more that all equipment must be UL listed. All of it is, UL listed isn't it?

Sean: Ordinance is asking for a certification which they cannot produce because they don't have any waste to test to certify at this point.

Scott N: Agrees not generating waste at this point. But everything is UL listed he assumes. All products in pretty common use.

Susan DS: In response to this application, as the project is proposed, there is no waste if all components are UL listed and are operational and waste only occurs at the time of decommissioning.

**Scott Newhart: Move that 107.9 Certification is acceptable as presented with Susan Dunham Shane's explanation for acceptance. Explanation: In response to this application, as the project is proposed, there is no waste if all components are UL listed and are operational and waste only occurs at the time of decommissioning.**

**Craig Knight: 2<sup>nd</sup>**

**Chair calls for a vote: In favor 4/0**

\*\*\*\*\* Scott suggests that at some point 107.9 should be moved to a different area. It doesn't feel right here. Susan says the certification needs to be worked on. We want to put a pin on it to discuss further at a later time.

#### 107.10 Storm Water Plan

Susan DS revisits the Board's agreement under the Review Criteria section that if MDEP issues a SLODA permit we will agree with it.

Susan DS does have some questions for Sean tonight from their SLODA application.

a) Interested in size changes from March 2022 and August 2022. Size went from 97.9 acres to 99.93 acres but amount of developed area dropped. It would seem that is because change of access from Rt. 178 to from Davis Road. Is she correct?

b) Soils map shows stream or canal that goes between the two panel fields. She wants to address this in Wetland plan because nothing shows on the drawings as to how this waterway will be handled during construction.

c) Impervious area starts at 16,000 sq ft down to 8500 sq ft. In first presentation lists an existing gravel road. In the August update there is no mention of this. Why?

Sean T: Because we were no longer using the gravel road from Rt 178. Susan DS: So you get to not count it because you aren't using it? Sean T: yes

d) You included Meadow Buffer and Forested Buffer empty forms in application. Do you fill them in and sign off on them? Sean T: DEP asked for those to use as a template. When we do install those buffers they need to be recorded at the Registry. This is just a sample language that gets recorded.

You don't really have a forested buffer do you? Sean T: Forested buffer along the access road from Davis Road up to front edge of our property.

When do you fill the forms in, after construction? Sean T: Yes. In past DEP required the forms filled out before construction. What kept happening was that during construction layouts can change. So if you made a plan for a buffer along a road and then it shifts 5' then your plan is

not correct. Haley Ward talked to DEP re this problem and got them to agree to consent to filling in after construction when an accurate road was built and base buffer off that.

Susan DS: Thank you No more on this section.

e) In 8/22 submission to DEP re impervious area only the auger screws are counted (397 sq ft). Why is this?

Sean T: DEP says what considered “impervious” is same as “developed” in solar as long as everything else is maintained as a meadow it is not considered as impervious area. So what counts as impervious area are only roads, equipment pads, and screws or support posts for panels. As long as don’t mow more than two times a year it is not considered as developed area. If mow more often it is then considered “lawn” and becomes a developed area.

f) Is there a drawing or map that has forested buffers 1 – 10 on it? Sean T: Should be. It is dark blue one - Storm water Treatment Map. Susan asks, the colored one with the little dongles? Sean T: Yes

g) Meadow mix. You were going to send to us. Scott N: we did receive this in an e mail of June 15. Title says “Planning Board Meeting” and came from Denise. Rest of Board says they read it. Susan apologizes, she did not see it. Now no reason to ask questions. Susan asks Board if they reviewed and think acceptable. Yes says Board. Scott N: almost ordered some for his backyard.

During the above section, while Scott checked for received date Craig K asks; If you aren’t stumping the project how do you mow it? Weed wacker? Sean: this project area will be stumped inside the fence. Craig K: He has seen sites where didn’t stump. Sean T: And he knows of projects where developers claimed they were stumping to avoid wetland impacts but they didn’t. In reality he doesn’t understand how they build it or maintain it. Susan: So the stumps are in the way as you go down the rows installing panels, etc.? Sean T: Just grind stumps down to ground level. But then the roots are still there in the way when you are setting pins, etc.

Susan DS: The Storm water Control seems okay. Scott N: asking or telling? Susan: Telling

Susan DS asks Sean T: Was it in Storm water app. that there is the road way and a pad area and then exempt from treatment Wetland bound 60 sq ft. Sean T: DEP says they have to treat 95% of impervious area but they exempt crossing through wetlands. This is because you can’t have a buffer in a wetlands, generally the road is in a low spot so can’t put some other treatment.

Susan: But according to drawing you are going to put berms in, right?

Sean T: Berms are temporary erosion control measures used during construction Buffers are permanent. Buffers are forever to contain contaminants coming off the road for life of project.

Susan: But then the contaminants come off the road because there is no buffer.

David P: They come off all the roads.

Susan DS: Thank you for answering all these questions. It was very interesting and impressive.

**Susan Dunham Shane: I move 107.10 Storm water Control submission of the narrative is accepted and agreed to as we did in earlier part of the review. (Typist note: Review Criteria - Site Plan Review items b. Soil and d. adequate Storm water control.**

**Scott Newhart: 2<sup>nd</sup>**

**Chair calls for a vote: All in favor 4/0**

## 107.11 Decommissioning Plan

Chair David P reads: Please find plan attached in Appendix N. Following Eddington Planning Board review of plan BD Solar Eddington will record this in Penobscot County Registry.

Susan DS: Missing in decommissioning plan the words “six inches below the deepest equipment depth” David P: Where are you? Scott N: in Book 1 Susan DS: no, Book 2 and Book 3.

“Replacement Appendix N” in February book.

Also why did this never change (on a different subject) “long term contract with Central Maine Power” that’s wrong isn’t it? Sean T: yes Susan DS: And that appears everywhere. Scott N.

“where are you reading that? Susan DS: Paragraph 1, second paragraph of Decommissioning Plan. That should be Versant Power, correct? Sean T: correct

Susan also points out word deposed instead of disposed several times

Scott N: Section G says fence and alarm system. Do you have an alarm system?

Sean T: It is a remote monitoring system but not an alarm that goes off on site.

Scott N: then it should be described as a monitoring system.

Scott N: Section J “Ground” it needs to specify clear to a depth of at least 6” below any element of the project including panels, electrical lines etc. Just needs to have a note.

Susan adds or offers: As per the requirements of Section 107.11 in Solar Ordinance.

Scott N: so these things are about it, right.

Susan DS: Question for Sean Under section J Ground re “BD Solar Eddington working with land owner.” Should it say “Responsible Entity” instead of BD Solar, in case project is sold? Or would there be an addendum? Sean T: change wording to “the system owner”

Scott: But land owner could stay the same. Susan agrees.

Susan suggests: “BD Solar Eddington, LLC or current operator” as a replacement wording.

Susan reads:” work with landowner to determine what roads would be retained..” Does that mean the access road off Davis and the interior roads? Sean T: Yes

Susan DS: next item - 107.11.4 Itemized list of all costs of decommissioning.

Had note under 5: you write labor cost figured at \$20/hour per State of Maine. Her note is heavy equipment labor such as Crane Operators, bucket electricians, master electricians, and hazardous material transporters get paid much more. This estimate just doesn’t seem right. Did calculation of number of man hours per each line item by dividing number provided by \$20/hr rate.

However, the applicant’s chart and plan go to the Select Board and they have to decide if they agree with the numbers. We also send a letter with this stating whether we agree with plan and they have to come up with a decommissioning cost number.

She has looked at the calendar and she doesn’t think Select Board is scheduled to meet until 3<sup>rd</sup> week in July. We have meeting the 27<sup>th</sup>, next is a holiday, we meet the 11<sup>th</sup>. So they won’t meet until the 18<sup>th</sup> probably.

Select Board will not decide this number or the road surety number until after that time.

Just wanted to throw out that I am concerned about the labor rate. If applicant is going to stick with labor rate of \$20 then Susan will send her calculation list to Select Board with everything else.

Chair Peppard: Yes, we should send this to Select Board. They will have to look and see if they feel they are realistic numbers for 10 or 20 years down the road.

Scott and Susan: Remember that there is a required review of amount every 5 years.

General discussion that even now the rate of pay calculated in the plan is moving to be too low. Various members offer examples.

Sean T: will submit reworded plan by our next meeting.

Susan DS: Suggests then that we just mark this section (107.11) as “hold off and revisit” .until receive rewording next week.

Chair: do we have a motion? Susan DS: no, don't need because we agree to revisit next week.

#### 107.12 Certification of Decommission

Scott N: That's us

Susan DS interrupts: One more thing... Remember Nick Asked for Force Majeure and they provided it as #6 in the Decommission plan with a form.

Scott N: says that we went over this before.

Susan DS: she has a note that she did not understand what it means. She reads wording.

Scott N: Means if they don't meet the orders then entire project.

(Sean says Nick wrote this so he could explain it.)

Scott N: He has it. Discussing if, for example, a microburst goes through and causes damage it is beyond their control, as opposed to neglect on their part. It points out what things are beyond their control and they are not responsible.

Susan: So it is events outside of your control. Scott says we discussed this at length. Suggests sending to lawyer for his review.

Susan DS: Note: Denise could please send #6 to Charlie Gilbert? Scott N suggests send full section. Susan DS agrees that then he can get full sense of plan and address #6 particularly to see if it is worded correctly and please comment. Additionally Plan Board will hold off sending Decommission Plan to Select Board until after Sean gives us the revision form next week.

Back to 107.12 Certification of Decommission

**Scott Newhart: Motion we accept section 107.12 Certification of Decommission as written in this narrative because this section is on us. Susan Dunham Shane: 2<sup>nd</sup>**

Discussion: Susan DS: My notes say this should actually be in the Finding of Fact and in Building Permit and the Decommissioning Plan.

Scott N: So that is for review later?

Susan DS: Her thoughts are that it needs to be pasted into Finding of Fact and in Building Permit because they travel with the project throughout its life.

Scott N: Feels that this section only happens if the project is built and is decommissioned so it is an after the fact action and issued by the Planning Board.

Chair: End of discussion? Yes

**Call for a vote: In favor – 3 / Opposed -1 (Susan DS)**

#### 107.13 Performance Guarantee (Appendix N in Book 1 and Replaced in Book 3)

Susan DS: #5 Labor Estimate is the Performance Guarantee.



Therefore 107.13 is on hold for us until it is approved as presented or with changes by the Select Board.

Sean T: Select Board will also work with applicant to agree to a form of payment?

Susan DS: yes

Susan DS: Mr Chair I have constructed in my notes a list of what we had on hold or to revisit. Would such a list be a help to the Board?

David P: That would be wonderful

Susan DS: Sean, are you all right? Feel everything is clear? Scott: are you happy we got to end of list.?

Sean: I'm happy I won't be here next week

Susan DS: Advise Board that I am scheduled for surgery on July 12. So will not be able to attend a meeting on July 11<sup>th</sup>. So next week will be my last meeting.

Craig K: We will be done by next week.

General laughter in room

Susan DS to Sean: I have a list of wetland questions. Can I send them to your e mail?

Sean T: Yes. Sthies@haleyward.com Susan DS: Thanks Sean T.

**PUBLIC ACCESS:** no one

**AGENDA FOR FUTURE MEETINGS – HOUSEKEEPING:** Board was given copies of new Floodplain Management Ordinance which was approved on 6/20/2023 at Town Meeting.

**DATE OF NEXT MEETING:** June 27, 2023 @ 5:30p

**ADJOURNMENT:**

Chair Peppard: Anything else to come before the Board? No?

**Motion to adjourn. Scott N: Move Craig K: 2<sup>nd</sup>. In favor 4/0**

Meeting adjourned 7:14 pm

Respectfully Submitted,

Susan A. Dunham Shane  
(From Recording and Denise Knowles Notes)