

Town of Enfield  
Zoning Board of Adjustment  
Public Works Facility

June 9, 2015

**Present:** Phil Neily, Zoning Administrator; Ed Scovner, Chairman; Tim Lenihan; Celie Aufiero; Mike Diehn; Paula Gillen, Recorder.

**Guests:** Howard Shaffer, Don Roberts, Dave Carr, Jim Bowman, Douglas Plumley, Marcia Herrin, Dolores C. Struckhoff, Rick and Leslie Barraro, Rosemary Affeldt, Karen and Hank Doran, Ellen and Lloyd Hackaman, Troy McBride, Joel Stetterheim, Robert A. LaCroix, Carol and Rich Lammert, MaryAnn Heagen, Scott Osgood, Gabriele Currier, Paul Currier, C. Farewell, R. Dickinson, Polly Dickinson, Sharon Kiley, Dianne Nelson, Dave Nelson Scott F. Donnelly, Pat Paradis, Fred Paradis, Marian L. Dunn, Gisele Estey, Nicole Lovejoy, Fred Paradis, Philip Vermeer, Beverly Vermeer, Ken Wheeler, Charles Clark, John W. Kluge, David Crate, Judy Crate, Davis Beaufait, Susan Cromwell, Rob Maiz, Holly West, Nancy Smith, Charles DePuy

**Call to Order:**

Chairman Scovner called the meeting to order at 7 p.m.

**Approval of Minutes:**

*Tim Lenihan moved to approve the meeting minutes from May 12, 2015. Mr. Scovner seconded and the motion was unanimously approved.*

The minutes of April 14, 2015 and December 9, 2014 were not able to be approved due to lack of quorum of those who attended these meetings.

**Unfinished Business:**

None.

**IV. CITIZENS FORUM**

Chairman Scovner explained the rules to be followed for both hearings: All questions and comments are addressed to the Board. No discussion between members of the public. State your name each time you speak. Once Mr. Scovner turns the discussion over to the Board, members of the public will not be permitted to speak unless requested to do so by the Board.

- I. Mascoma Valley Dog Park Supporters, Inc., by their agent David Fracht, as a nonprofit organization is applying for a special exception. They are requesting to install a sign up to 24 square feet, as allowed by Article 408.1 section C. of the Town of Enfield Zoning Ordinance. This property is located on Route 4A, Map 11 Lot 044 in the Residential 1 zoning district.

Marcia Herrin, president of Mascoma Valley Dog Park Supporters, Inc., filled in for Mr. Fracht. She states, as the group understands it, there is a zoning rule that only one sign per lot in Enfield is permitted. The Mascoma Valley Dog Park is on a lot where Shaker Recreational Park is. They are asking to be allowed to have a zoning exception so they may have a sign that marks the entrance to the dog park. They need a sign as they are surrounded by bushes down at the far end of the lot. They tried to track down the people who made the Shaker Enfield sign but they are no longer living or available.

Mr. Lenihan stated the exception for which the Dog Park is being allowed would essentially be for a 3 foot x 8 foot sign, 24 square feet. Twelve square feet is the maximum allowed without an exception. He asked why the sign needs to be so big. Ms. Herrin replied they are asking so they have the option. They have not designed the sign yet. The entrance to the dog park is hard to see as one rounds a curve and there are a lot of trees there. They would consider, if they get the exception, a larger sign versus a smaller sign because it is hard to see.

Mr. Lenihan asked about the content of sign and potentially sponsors being on the sign. Ms. Herrin stated they won \$25,000 in the PetSafe contest. The only thing they require is their name be on the major sign to the park. They do not have to call it PetSafe Park, they like Shaker Field better. They have to include their logo, which includes their name, on the sign. They will have smaller signs within the park which lists their donors but not on that sign. They will be on markers, not advertising. They do not want to clutter the park. As stated, they are looking for the sign to be somewhat compatible with the other ballfield sign. It is easy to drive right by the property.

Ms. Aufiero observed the current sign faces the road and asked if the new sign will be perpendicular to the road. Ms. Herrin confirmed the proposed sign position and that it will be 2-sided to allow it to be seen from both directions. She stated the current sign was put up prior to the parking lot construction as an introduction to the park. The park opening will be on Old Home Days.

David Carr asked if the Dog Park is asking permission to have a sign that would advertise a dog park that would be larger than a business owner has to advertise their business? Mr. Scovner responded this a special exception, they are asking for a specific sign which exceeds what would normally be allowed. This is why they are here, to have a slightly bigger sign than what is allowed by the zoning law. As a nonprofit there is different criteria for signage.

Mr. Scovner asked if all abutters have been notified. Mr. Neily replied in the affirmative.

Mr. Scovner outlined the criteria for the special exception:

1. The proposed site is found to be in an appropriate location for such use.
2. The proposed use will not adversely affect the property values or improvements in the adjacent area.
3. Appropriate and adequate facilities will be provided for the proper operation of the proposed use.
4. The proposed use will comply with the applicable regulations of the district in which it is to be located.

Ms. Aufiero recommended that the sign be compatible with the Shaker Recreational Field sign.

***Ms. Aufiero made a motion to vote to grant the special exception as requested with the exception that the sign be in keeping with the same style and manner as the Shaker Recreational Field sign. Mr. Lenihan seconded. The vote was unanimous, 4 yes. The motion carries.***

II. Philip Vermeer for the Vermeer Group LLC, is requesting a Variance from Article IV, Section 401.1 of the Town of Enfield Zoning Ordinance. He is requesting to locate a commercial solar array, 100 kW-AC in the Residential 1 (R1), zoning district. This property is located at 130 Main Street, Map 31 Lot 1A in the Residential 1 zoning district.

Mr. Scovner asked if all abutters have been notified. Mr. Neily replied in the affirmative. Fred Paradis the president of Oak Grove Cemetery, stated they did not receive notification. Mr. Neily stated the notice was sent to the address provided by the Town assessor, a PO box in care of Wilfred Blain. The notice was sent via registered mail and it was accepted. Mr. Blain's daughter was in the audience and stated she signed for the piece of mail.

Mr. Scovner reviewed the variance criteria:

1. There should be no diminution of value of surrounding properties suffered
2. Granting the permit must not be contrary to the public interest
3. Literal enforcement of the ordinance would result in unnecessary hardship as established by the following:  
Special conditions of the property make an area variance necessary in order to allow the applicant to construct the development as designed  
The applicant cannot achieve the same benefit by some other reasonably feasible method that would not impose an undue financial burden
4. The spirit of the ordinance is observed
5. Substantial justice will be done

Philip Vermeer distributed handouts and began a slide presentation. He proposed a project which will benefit the citizens of Enfield and the Community Lutheran Church for the next 25 years and make it a better place to live and work for all of our children and grandchildren in the future. Mr. Vermeer and his wife, Beverly, own 50% of Vermeer Group LLC. They bought a little farm in Enfield a couple of years ago which was in a bit of a state of disrepair. Since that time they have been doing a lot of cleaning and fixing and repairing of the barn and looking for ways to make the farm productive once again.

They live in Enfield and are citizens of the community. When they first got to Enfield they put up a 4.5 kW grid tied system at their personal residence at 45 Flanders St. As a result of that, he pays one electric bill a year to Liberty Utilities in January. The Vermeer Group last year put up a 10 kW system with something new in the State of New Hampshire called group net metering. This allows the user to group meters and have a group of people get together and decide they want to do solar, and then build a system to do that. This was his test. The system really worked. Even last December he received a check from Liberty Utilities for over \$200 from the energy that system produced on the farm. That system is a closed system. He has 3 meters on the farm. He has rental structures and a barn on the property. A requirement of group net metering is to use all the electricity produced, so he added the Community Lutheran Church to pick up any overflow on that particular group. This is working, it is operational, and all it required was an electrical permit from Phil Neily. He proposes to build a system similar to this one, except it is a little bit bigger. Instead of a 10 kW system it is going to be a 100 kW system. He has a group of folks signed up already. The intent is to benefit the church with that. He explained he is doing all this because since he has moved here he has been on the Enfield Energy Committee and they are always looking for ways to expand renewables in the Town of Enfield. Second, he is the president of the Community Lutheran Church and they are having interesting times keeping their finances in order and he saw this as a way to provide very long-term funding for the church, utilizing this new net metering system. He is also member of the Oak Grove Cemetery Board although has not yet attended a meeting.

The time is right to use Federal and State incentives before they expire. The federal 30% tax credit runs out December 31, 2016, a year and a half window to get projects done before they are probably not

going to be economically feasible. It is a great opportunity to make a commitment to the community and to the environment and to the future of our children and grandchildren.

What is the project? It is basically 3 rows of panels about 13 feet high located way back in the pasture, they are hardly visible from any of these locations. They drove around the property and took photographs. They have to update the electrical cabling that comes in, will replace the existing overhead wire with heavier wire.

Mr. Vermeer outlined the issues he needs to address, the criteria the Board needs to evaluate and vote on: Impact on surrounding property values; benefit to public interest; special conditions results in unnecessary hardship; substantial justice; not contrary to the spirit of the ordinance. He has also heard of concerns of glare off the panels and he will address that as well.

Mr. Vermeer explained the next slide showing the location of abutters within 200 feet of the property and the general location of where he is going to position the three strings of arrays. They are all pretty much behind his property.

There is a wetland so they made sure to maintain a 50-foot buffer between any of the arrays and wetlands. They will probably have a 25-foot buffer between arrays and the cemetery. The power pole is going to be the same pole that is by the trailer now and there will be a little garden shed to hold the electronics.

There will be an underground line that runs to the shed which will be somewhere behind the trailer. The shed will only be visible to one neighbor. The power line will be upgraded. The panels are 12-13 feet high. Because this is a very old pasture, the trees are 15-20 feet high, so the panels will be lower than the trees. When looking over from the graveyard to the lake will be looking over the top of everything, so the view will be unobstructed. Panels will be mounted on poles that are screwed into the ground and can be easily removed. There is no dirt moved, the pasture is going to stay at the same grade, there is going to be no disturbance of the sod, there is going to be no erosion or runoff. Simply screw the poles into the ground, bolt the framing to it, and bolt the panels to the frame.

The next slide showed an 8 x 14 foot shed. That is where the electronics go in, convert from DC power to AC power, and that plugs into the grid.

Photos were taken in April with no leaves on trees. If current panels are visible, the new panels will probably be visible as well. Photo from 130 Main Street shows a glimpse of a panel.

Visual analysis from the Lutheran Church on Oak Grove Street shows the panels are not visible.

The next photo was taken from Route 4. The panels will not be seen from Route 4.

The next slide showed a photo taken from Sargent St. There is no visibility of panels.

A photo taken at the corner of Estey and Main St. showed a gap between the tree line where the panel will be seen a quarter of a mile away.

Another slide showed the panels will be seen in the distance through the tree line from Estey Lane.

The lines of sight map showed tree lines, wetlands, current panels and location of proposed panels.

Looking around from his property, the resident of Plot 039 will have a little bit of a view of the panels off in the distance. He saw one upstairs window of Plot 041. Basically there is a row of trees and clumps of trees which block visibility.

What impact will this have on property?

- In Mr. Vermeer's opinion, it will improve property values in Enfield by stabilizing utility costs. If we start producing our own electricity we will not be subject to price surges as was the case last winter when energy had to be purchased from somewhere else. The more panels, the better the ability to stabilize energy costs in the Northeast.
- It will also show Enfield to be a forward thinking community. The Solarize Lebanon-Enfield meeting was packed. Everyone was excited about it, especially the young people. If you want a community that is forward thinking, concerned about the environment, and young people will want to come back to the town and live and buy houses in this town. Older people who seek to sell their houses will have buyers.
- Location is mostly hidden from view by vegetation. It is not going to deprive property values by having solar panels glaring in your back yard. It will not be a problem.
- Location near the cemetery not considered a problem.
- There will be a 25-year lease, so no further development of that property for the next 25 years.

Benefit to public interest is huge:

- Generated revenue in town. Buying local. Portions of payment of Liberty Electric bill go to Canada. They will go back into town and be spent in Enfield. The church is benefitting from some of that revenue.
- It improves the environment for current and future residents by providing clean, nonfossil fuel power.
- It provides a funding resource for the Community Lutheran Church for the next 25 years.
- It enables group of Enfield residents (20 people, still looking for more people to sign up) to sign their meters up. Have to use up excess power or write a check to Liberty at the end of the year. The more meters we get signed up the better. Mr. Vermeer was asked if the meters have to be on the farm. He replied no, they need to be on the Liberty network, do not need to be close to panels. Mr. Diehn asks if that is the commercial component. Mr. Vermeer stated yes. It enables a group of Enfield residents to indirectly contribute a portion of their electric bill to benefit the community.
- Because it is clean, nonpolluting, renewable it benefits the whole world.

Unnecessary Hardship:

- Failure to grant variance could prevent me from using some marginal land to benefit the community. This little plot of horse pasture is bounded by wetlands on one side and limited or no access to a major thoroughfare. Houses not economically feasible. As a former farm boy, Mr. Vermeer is always looking for ways to turn land into productive land. The best way he saw to do that was to plant corn and sell the corn, which according to zoning laws is perfectly legal. He is too old for that and it is too hard work. It is much easier to harvest some sunshine with panels.
- The \$75,000 grant from the State of New Hampshire that he has made application for and is in the queue for, if he has to redo this on another piece of property somewhere else, will have to restart the process and would get in a different position in the queue and may miss out on \$75,000 in grant money from the State of New Hampshire. Regarding this grant money, everyone who lives in the State of New Hampshire and pays a utility bill pays that money. That

add-on goes into this renewable fund and the money gets distributed. If that grand money is not spent in Enfield it is spent somewhere else.

- The result, if he has to move to another piece of property, it will increase the investment cost and will reduce the opportunity to benefit the Lutheran Church.

#### Substantial Justice:

- It increases the well-being of the community while doing no harm.
- It does not interfere with neighbors' enjoyment of their property.
- It is good for current and future residents of Enfield.
- It is good for sustaining the Community Lutheran Church.
- It provides 25 years of nonpolluting renewable energy.

#### Maintains Spirit of Ordinance:

- Enfield is historically a farming community and has always taken advantage of the sun's energy.
- Past use – Burnham pasture 100 years ago provided meat and dairy products for Enfield citizens. Let's use that same pasture with a little different technology, harvesting solar energy.
- In church's strategic planning, discussed having a community garden. Between the solar panels, as is done in Vermont quite a bit, is a 15-foot strip of ground. Plow that strip and grow vegetables, either donate the vegetables to a food pantry or the church could sell these at the new Farmer's Market. That maintains the spirit of the ordinance, that this is still rural, this is still a place to produce fruits and vegetables for the community.
- It is also very similar to utility distribution facilities in the R1 district. It provides electricity. It provides a utility for the residents of the community.
- We do not think it will substantially change the original character of the neighborhood with panels in a pasture completely surrounded by trees.

Additional issue of glare: There is new technology now where the panels are built to absorb sunlight and really do not reflect that much sunlight. In fact, reflection is much less than that of reflection off snow. Doing an analysis of the positioning of where the panels are going to go and where the nearest neighbors are, it is not going to be an issue.

#### Zoning Board Options:

- Regarding the zoning regulations, there is no mention of renewable energy facilities in the current zoning regulations. The Public Utilities Commission (PUC) regards group net metering installations of 100kW or less to be noncommercial systems. That is why Mr. Vermeer kept it under 100, so in the view of the PUC it is noncommercial. That means they get full retail for the kilowatts produced. If they went to 101 kW they would be considered a commercial energy-providing system, then would have to accept the wholesale cost.
- Mr. Vermeer believes the Board has the authority to, because there is nothing mentioned in the zoning regulations, to say the array is consistent with R1 designation as agricultural land preservation as by just putting the poles in the ground and constructing the metal framing and the panels, in a week's time the entire system could be removed, just like a service panel, and there is nothing but pasture left over with 4-inch holes in the ground, which over one winter with freezing and thawing would be gone. He thinks it could fit this R1 by being an agricultural use within the R1 district.
- Another thought was, in the regulations under special exceptions R1 district, other farm animals and generally accepted land uses for farm purposes. He stated it is a stretch. Being the Chairman of the Enfield Energy Committee, he would like to call a joint meeting between the

Enfield Energy Committee, the Planning Committee, to write some new regulations in zoning to help the next person who wants to put renewable energy in the community. Take it to the town meeting next year and have the town vote on it.

- Approve the variance from R1 to commercial, then would have to go through the planning board process.
- Have the right to disapprove the variance.

Mr. Scovner opened the floor to the public for questions or comments. He requested they raise hands, identify themselves, and reminded the audience to have no discussions between people.

John Kluge, selectman, planning board member and citizen of Enfield, stated he is a big fan of solar energy and a big fan of private property rights. He expressed fundamental questions about the project. He referred to Mr. Vermeer's indication of "no diminution of value." Mr. Kluge stated he did not believe Mr. Vermeer made that case in any way. Mr. Vermeer stated there will be no trees cut, there will be funding secured for the church and yet Mr. Kluge does not see any mechanism built in to establish that for future. We are dealing with the future of that piece of land. He asked Mr. Vermeer to express how he is going to ensure that trees will not be cut and how this relationship with the church will continue into further generations.

Mr. Vermeer replied that if something happened to him or his wife, everything goes into a trust. His son becomes the trustee. Every person who signs their meters up signs a net meter agreement. In that net meter agreement he can specify some of those assertions, that there will always be a donation made to the church, and so forth, but he has no control over whether the next person down the road will cut down trees.

Mr. Kluge stated that was the point, we have no control over the future. The only thing we have control over as a Town is the piece of land and what the zoning is on that piece of land.

Mr. Vermeer said he is only talking about that little piece of ground, 1-1/2 to 2 acres.

Mr. Kluge asked if Mr. Vermeer is willing to put some sort of stipulation on the land, that this is the only small piece of land that will be affected and that in the future 200 years nothing else will be done? Mr. Kluge does not believe this has been done. He believes once this is approved, all bets are off. The other question Mr. Kluge had was that Mr. Vermeer sort of proposed a solution to the dilemma. One of the dilemmas we have here is if this were to pass, then that opens up commercial zoning throughout the residential districts of Enfield, and the only reasonable way to do this is as Mr. Vermeer suggested, write up a zoning change, a planning change, and bring it to town meeting for all the voters of the Town to address. Mr. Kluge believes this is the most reasonable approach.

Mr. Scovner read the following letter from a resident unable to attend the hearing:

My name is David Fracht and I have been a resident of Enfield since 2009. I have been a member of the Enfield Planning Board for about 1/2 year and have also served as member and chair of a Development Review Board in Vermont for approximately 8 years.

I have heard Mr. Vermeer's proposal at a recent conceptual review of his site plan before the Enfield Planning Board. The project is well designed and is being put forward at a time when the entire Upper Valley, if not the nation as a whole, is turning to alternative forms of energy such as solar, wind and hydro. Unfortunately, the chosen location for this project is in a residentially zoned section of town (R1) and he is seeking a variance to allow a commercial operation in a

residential area.

In order to grant a variance, the Board must find that the applicant meets all five conditions specified in section 505 of the zoning ordinance. I would like to offer my comments on the ability of the applicant to meet conditions B and E.

Condition B requires that the issuance of a permit be of benefit to the public interest. In a broad, global sense, it is in the interest of the public at large to reduce their use of fossil fuels, and this project does, in some small measure, accomplish that. Taking a more narrow view of the benefits of this project to the Town of Enfield and its inhabitants leads me to a different conclusion. As I understand the proposal, the solar arrays have the capacity to supply approximately 2 dozen households with all or part of their electricity consumption. This is not a large number of households. I further understand that the participants in the project will not receive any financial benefit by way of tax incentives or lower cost for the electricity which they use. Rather, the "profits" from the project – the money left over from the sale of solar power to Liberty Utilities after the cost of construction and ongoing expenses of the project such as administration, maintenance, taxes, land rental, etc., are paid by Mr. Vermeer's corporation – will be donated to a local church. It is estimated that the annual donation will be in the neighborhood of \$6,000 to \$8,000, a relatively small sum of money which works out to be less than \$1.00 per day per subscriber. The tax incentives will accrue to the applicant and/or his corporation.

It is, therefore, my conclusion that there would be little benefit to the public at large from this project and that the project does not provide sufficient benefit to the public interest to warrant the granting of a variance for a commercial scale operation in a residential district.

Condition E requires that the proposed use not be contrary to the "spirit" of the ordinance. The spirit of the ordinance is best expressed in section 101-I of the regulations: "To provide for harmonious development of the land and its environs." Simply stated, one of the main purposes of zoning is to designate different types of development to different parts of a municipality so as to minimize the conflict between the needs of competing types of development.

Our zoning ordinance *does not allow* new commercial development in residential areas. The ordinance designates no less than 5 distinct areas within the Town for commercial/industrial development, and the proposed site for this project is not in any of them. While there are commercial establishments within this residential district, it is my understanding that most predate the zoning ordinance and thereby enjoy "grandfathered status." To add a new commercial scale venture in this district would move the district further away from the type of development desired by the Town as expressed through Enfield's Master Plan and duly adopted zoning ordinance. While it can be argued that the present application will not produce additional noise, traffic, other objectionable qualities, and will have a minimal visual impact, the same may not be true of a future application seeking to locate a commercial venture in a residentially zoned area.

In my mind, a small solar array designed to meet the needs of a single household is an acceptable use on a residentially zoned lot. A solar farm sized to meet the needs of several households is not an acceptable use on a residentially zoned lot, especially in a district zoned for 1-acre lots.



To provide an analogy: A couple of dozen laying hens kept in a shed by a resident who wants to have a supply of fresh eggs for his family, and perhaps sell the surplus from a stand on the front lawn, is a permitted and reasonable use of land in a residential district. If that resident later decides to scale up to a commercial operation with 250 or 2,500 hens, that is not a compatible or appropriate use of a residentially zoned lot and I would hope that this board would deny such an expansion.

It is for these reasons that I conclude that granting a variance for a commercial enterprise in a residential area is contrary to the spirit of the ordinance and should not be granted.

Thank you for your consideration,  
David Fracht

Charlie Clark stated he was confused why the project, which the PUC deemed not commercial as it was under 100kW, was being considered commercial. Phil Neily stated he made the decision it was commercial based on the fact that it was going to serve outside of the property and, given the size, and that it is not addressed in the zoning ordinance. Making that decision, he had the option to appeal my decision to the Zoning Board as an administrative appeal, he chose not to. Thus, we are here tonight hearing it as commercial. The Town does not have to follow PUC decisions.

Judy Crate stated a lot of the talk on the solar panels was a lot about the church. She requested the board keep in mind it is nice to have things given to the church, but is sounded like a major priority to do things for the church. Church members will want this but they do not have to drive up and down the Main Street every day and see the panels. Ms. Crate disagrees with Mr. Vermeer's visibility, that the panels will not be seen. She can see the panels that are already there on the Main Street and she does not think commercial panels belong downtown.

Karen Doran, an abutter, disagrees with the statement you cannot see the panels. Driving up Estey Lane there are two great big panels there already. She is all for solar energy but she agrees, this is not the location. She believes there is room behind Mr. Vermeer's barn and asked why he didn't put the panels behind his barn. She asked if he would want this in his own back yard, why didn't he put it there. Mr. Vermeer stated it would not bother him in the least. Ms. Doran asks what sound is going to be produced from the shed, she believes there will be a hum. Mr. Vermeer said Ms. Doran will not hear it from her house, that there is no hum. Ms. Doran asked what is the long-term effect of the heavier overhead wire on people walking around. Mr. Vermeer stated it was no different than walking down Main Street. Ms. Doran asked about Mr. Vermeer's opinion that the project will not affect property values. She stated in the long run, abutters need more than that. She is a member of the Lutheran Church and thinks it is good Mr. Vermeer wants to do all this, but she thinks he is using that as a crutch to get his point across. She asked how much room is required to install the panels? Mr. Vermeer replied it would cover an area of 100 feet x 80 feet if the panels were laid flat on the ground side by side. She asked how much room is taken up by current panels? He replied 36 panels currently take up space about 50 feet x 20 feet. Ms. Doran asked where the electricity produced by those panels go. Mr. Vermeer answered the electricity goes to the barn, renters in house, renters in trailer, and if there is any excess power it goes to the church. Ms. Doran asked about the longterm benefits for the church, how to ensure that is permanent. She asked what happens when technology expands. For example, the big dishes shrunk, now the big dishes are obsolete. What happens if the big panels become obsolete? Mr. Vermeer stated they are warranted for 25 years, but his business would replace with smaller ones if warranted. Ms. Doran asks the Zoning Board if she wanted to put a turbo windmill in her back yard, is she going to get permisison to do that. Mr. Scovner stated if it is not in the zoning law, if it is not an

accepted use, he would assume the person would have to come before the Zoning Board for a variance. Phil Neily stated this was based upon usage at a residence versus expansion outside of that residence. He stated if Ms. Doran put up a windmill at her own house, it can go up to a certain height right now as a residential unit. If she were looking to put up an array of windmills and do the same type of commercial application as what Mr. Vermeer is asking for, at this time in the zoning she would be required to do the same type of hearing for an approval in the same manner. Ms. Doran asked about the effect of turtles in the wetlands and frog pond. She asked if anyone had done a study on the long-term effect on wildlife and the surrounding woods. To save a few dollars versus the long term effect, someone should think about it.

Henry Doran stated in the winter they see the solar panels.

Dolores Struckhoff, an abutter, asked if there are any plans to clear additional land and put panels up on the hill behind Sargent Street. Mr. Vermeer states there is no plan to clear the trees up the hill. He stated probably the long-term plan is to turn that into conservation land. Ms. Struckhoff asked if Mr. Vermeer has done any research on the long-term health effects from solar panels placed in residential areas. Troy McBride from Norwich Technology stated solar panels are primarily silicone, glass, and aluminum, the posts are aluminum, so there are no toxic chemicals in terms of leaching out or anything to that effect, they are benign. On the electrical side, the power is much less than power lines run on schools throughout the country.

Rosemary Affeldt referred to the comments just given regarding effects on people and the environment, to clarify that there is no ill effect on frogs. Mr. McBride reiterated there is no ill effect. It is treated in many places, including Vermont, as preserving agricultural land. He agreed with what the Vermeers were saying they are preserving the environment, reducing the pollution.

Joel Stetterheim stated if you look at the power mix from Liberty, a large part comes from frac gas and fossil fuels. He suggested looking at the balance of the impact from installing the arrays versus not installing the arrays. Not installing the arrays means using the fossilized energy, which are undeniably having an impact.

Ms. Aufiero read the following letter from Ruth R. Lovejoy:

As the owner of the property abutting the property for which the Vermeer Group, LLC seeks a variance from Residential R1 to Commercial C/1 zoning in order to construct a 100 kilowatt AC Solar Farm, I must strongly protest Philip Vermeer's contention that such an enterprise "will not substantially change the character of the neighborhood." Inasmuch as Mr. Vermeer does not actually live in the vicinity of his proposed Solar Farm, it is understandable that he would ignore the aesthetic injury his enterprise will cause and simply mischaracterize it as "[s]imilar to power lines and substations located in R1 district to provide utility service." My family has lived in Enfield for over 200 years and actually occupied the property located at 120 S. Main Street for over 75 years. We will continue to do so for many more years to come. Any comparison of Mr. Vermeer's solar panel farm to existing power lines and transformers is illusory because the proposed system will ultimately be connected "to the electrical grid and Liberty Utilities...via upgrade to *existing overhead lines and a transformer on site*," thus adding rather than eliminating an unappealing structure.

Mr. Vermeer's contention that his Solar Farm is preferable to the natural "collect[ion] of sunlight to produce plant life which requires burning of fossil fuels and mowing to keep invasive species from taking over" is pure sophistry. He neither discusses the site preparation required for the

installation of his Solar Farm nor the ground maintenance required thereafter (i.e., "occasional lawn mowing") to avoid any future obstruction of the solar panels by plant growth, including the "invasive species" he references in his application. Nor does he discuss the health hazards associated with either the Canadian manufacture of the solar panels he seeks to install or the decommissioning of those solar panels at the end of their 25-30 year life span. Additionally, it is unlikely that a "Community Garden...to Support Food Pantry" could be sustained between the "Ground-mounted solar array(s)" given the fact that, "[u]nlike wind facilities, there is less opportunity for solar projects to share land with agricultural uses." *Environmental Impacts of Solar Power*, Union of Concerned Scientists, 2 Brattle Square, Cambridge MA 02138-3780. The land impact from Mr. Vermeer's utility-scale solar system as proposed cannot be minimized merely by suggesting that a community garden might coexist between the rows of solar panels when it has been found that the land impact can only "be minimized by siting [such solar systems] at lower-quality locations such as brownfields, abandoned mining land, or existing transportation and transmission corridors." *Id.* The output of a solar panel system such as the one proposed by Mr. Vermeer is proportional to the direct sunlight it receives and therefore must be oriented and tilted for optimal exposure, thus removing all possible obstacles, including plant growth.

The photographs Mr. Vermeer uses in his Power Point to support a contention that the solar array will not be visible are also clearly deceptive. There is a vast difference between the existing three panels and the proposal to extend panels over "2 acres" of land abutting my property and clearly visible from Main Street. As stated above, all vegetation that could obstruct the panels' exposure to the sun will have to be removed prior to installation of the solar panels and the land thereafter maintained to optimize this exposure. It is not intended to be an invisible structure. And the mere fact that it is located near a cemetery does not diminish the adverse impact this project will have on surrounding property values. Further, Mr. Vermeer completely ignores the adverse impact his proposal will have on the historic district of Enfield.

Mr. Vermeer also acknowledges that the property is situated near wetlands but fails to address the impact the solar farm will have on the wildlife protected by those wetlands. Instead, he appears to rely primarily on the supposition that this Solar Panel Farm will generate an incalculable amount of revenue for the Community and his Community Lutheran Church. Mr. Vermeer's inability to enter into this particular business venture does not constitute legitimate grounds to change the character of the affected neighborhood.. I strongly object to any variance from the present R1 zoning and plan to be represented at the hearing on June 9<sup>th</sup> by my daughter, Nicole Lovejoy, who presently resides at the property on Main Street.

Sincerely,  
Ruth R. Lovejoy

Dave Carr, Sexton of Oak Grove Cemetery stated the lake views are what set that cemetery apart from the others. Losing the view would cause adverse effect on sales of lots. People can buy lots in any other cemetery in Enfield but they like the view. After Memorial Day he is flooded with calls from folks from surrounding communities on how to purchase a lot. It would be adverse and as it stands now, visitors enjoy being able to see their house or camp from the cemetery. The views sell it. He agrees no one can predict the future. For example, if ash borers or thrips come in and decimate the trees, the view would be of the solar panels. He is all for solar energy but his conscience says that people have given their hard-earned money to preserve the views and serenity of the cemetery. He would be derelict in his duty if he did not try to protect it.

Holly West states she finds solar panel arrays a beautiful installation. She drives down Main Street a lot and sees the ones currently installed and she loves looking at Energy Emporium. She feels a lot of people seem to be offended by the way they look. She is wondering, other than what Mr. Neily mentioned, what the zoning board and planning board are already looking at in terms of planning for renewable energy and how it should fit into the Town's footprint in plans for the future. She feels it is really important and thinks the Town is going to be very shortsighted if it starts turning away projects like this that really could benefit the whole community and limit the amount of panels people are concerned with that would be on houses.

Sharon Carr spoke. She has mixed feelings about this. On one hand, she is in favor of renewable energy. She has gone back and forth about whether this is the place for it. She also thinks that wherever this kind of thing is proposed, the neighbors are going to say it's a great idea but they can see it and do not want it in their back yard. Everything costs something. It costs us to do this, it costs us not to do it, whether it is here or somewhere else. We have to weigh that out, the whole story about renewable energy versus other forms of energy which are not and the effects of those. She asked if she would feel the same way if she were an abutter and stated she hoped she could be open minded about it. However, she also felt in order to make this happen, if it does, she hears John Kluge's concern about opening up to changing the zoning, what else can be done commercially in residential. That opens up a can of worms. There is a way to do that to make sure there are limitations on that and that absolutely would have to happen. Mr. Vermeer stated he has no problems putting limitations on it to make sure that does not happen.

Robert LaCroix states solar energy, if one does the research, is plus, plus, plus, there is really no impact that has been proven in any way to the critters or animals or anything around it. He thought the big issue here was the R1 district, what to do to opening up R1 district to commercial. Unless it is really defined it opens the door a lot more commercial in the R1 district. He thought if this were approved it needed to be really defined in some way. There is some study that needs to be done if the door is going to be opened for R1 commercial. He thinks what Mr. Vermeer is proposing, the idea, the concept, the major question is R1. That is the big issue.

Kurt Gotthardt had some questions. He asked about the farm's acreage. Mr. Vermeer answered the total acreage of the farm is 18 acres, of that 10 acres is timber, and about 4.16 acres is pasture. They are only going to be using a fraction, probably 1-1.5 acres. Mr. Gotthardt states in the open pasture area of approximately 4 acres technically 8 houses could be built there with appropriate setbacks, etc. He asked the Board if instead of solar panels going in there, would there be any restrictions if he put up the same number of storage sheds of the same dimension and heights. Mr. Scovner replied that was taking about two different things, comparing apples and oranges. Mr. Gotthardt asks about a storage shed in personal. Mr. Neily answered if it remained in personal use in the R1 with no commercial feature, meeting the setbacks, meeting the setbacks to wetlands he would be able to build a subject-sized building. Mr. Gotthardt asked if visually there would be any difference. Mr. Neily stated he could put a personal building there noncommercial, height limitation of 35 feet in the zone. Mr. Gotthardt asked what makes this project commercial? Is it simply because he is selling the power essentially outside his personal use? Mr. Gotthardt stated he is on planning board and he has dealt with commercial versus residential uses the time. When you think commercial, it is all the list of those negative features. This is why you separate the zones, why you have residential separated from your commercial because you do not want the children where the trucks are coming, you do not want the noise or the operating of the trucks or the deliveries or the manufacturing noise from that truck and the constant traffic is also a big issue when you have commercial activities. This project has none of those negative downsides that are normally associated with a commercial project. Mr. Neily stated it is owned by a commercial

enterprise for profit. The administrative decision was made that it was a partial enterprise. Mr. Vermeer could have appealed the administrative decision. Mr. Gotthardt stated he is not arguing that it is not commercial, he is stating it does not have the negative effects of commercial projects associated with an abutter's or town's perspective. It is not like Route 4 commercial. It does not have negative downside. There have been several comments if this variance is granted it would open up R1 to other commercial activities. Mr. Scovner stated it is called precedent. The next person will say "He did it, why can't I?" That is what this would do. The precedent has been set. Mr. Neily stated the zoning board is going to look at each project as an individual and each parcel of property as an individual to make a decision individually. It does not give an umbrella to all commercial expansion at this point. But a decision has been made and that decision can be looked at and decided if it is the same or different to a piece of property. Mr. Gotthardt stated if you were to grant this variance as a commercial solar panel and you are not doing that because it is commercial and any commercial can go anywhere in R1, that is similar to saying the next time you grant a variance you just forget about that whole zone because you just changed it. He stated he does not buy that argument. Mr. Scovner stated he does not think the Board made that argument. Mr. Gotthardt stated it was being implied. He asked when the Board makes its decision on each of the criteria, how much weight is given to public comments, the presentation, versus cold, hard facts of the five criteria. Mr. Scovner stated Mr. Gotthardt was asking the Board to make a decision on how everyone else thinks. He stated he does not know. He knows how he thinks. He stated he does it as objectively as possible.

Douglas Plumley from Bishop Lane in Enfield stated if the Town is setting a precedent it is a good precedent to set. Mr. Vermeer could use the land in a way which would have much more impact on the turtles and frogs. A horse farm, a cow farm, chickens have more impact. Mr. Plumley did not look at panels as a visual defect. He thought his generation does have not have that perception and the Town should encourage this type of development.

John Kluge made a comment more directed to the Board and Mr. Vermeer that one of the issues to be addressed is one of hardship. Frankly, he did not see any hardship here. The gentleman bought the land two years ago and now to say there is a hardship because he cannot put up a solar farm is a little disingenuous. There are many other things that could be done with that land so hardship is not one of the issues. He thought the most appropriate thing for Mr. Vermeer to do is to get together with the planning board and develop a proposal for the Town meeting to address this on a town-wide basis. He stated the people are right, the Town needs to address the issue of solar power, maybe make it feasible, but there has to be some sense of town-wide regulation rather than doing it through zoning decisions and zoning restrictions.

Ms. Aufiero admitted she did know a lot about solar so she did her own research. One of the things she read was there are toxic metals in the panels. If they are broken it can get into the water and it can have an impact on the environment. She stated Mr. Vermeer was saying it was nothing but she read that there is. Mr. McBride stated he believed Ms. Aufiero was referring to cadmium telluride panels which are produced by a company called First Solar. It is a different technology than the silicone panels.

Nicole Lovejoy stated she did a lot of research. There are articles which state there is potential that it requires additional training for EMS and firefighters. There is concern with the electromagnetic field because of the positioning toward her land as he has to avoid the wetlands. She will see the solar arrays. She was concerned about the fact that literature on the internet states there are potential health and environment issues that the Town needs to be concerned with. If it had to be fenced up it is an issue. If a 12-foot fence is needed that has barbed wire at the top so the kids cannot get in to the field. The data does say there is a risk in residential. Whether it is right or wrong the Town does have to

consider that it has not been in existence long enough. An article from the State of Massachusetts states if there is someplace out there that is commercial, that is where it needs to be. He should not be putting solar panels in the middle of a residential area. This has been her family home for over 75 years and her final resting place is out in Oak Grove Cemetery looking down over this, so she has a vested interest in this her entire life. She cares about her future relatives.

An attendee asked where were the panels made? They are made in Canada. They are glass and aluminum, not that different from ones in a house.

Scott Donnelly, the Pastor at Community Lutheran Church. He wanted to take off his pastor's hat and said he knows Phil Vermeer. He has been incredibly humble. He has done the research. He reiterated that two young people spoke and said a solar panel is actually an attractive feature. When he thinks about merging tradition and innovation, which is what he does as a pastor, he feels the comments of concern about tradition are valid. The Town needs to consider that the very best of Enfield is also heading toward innovation. When he hears young people say a solar panel is more attractive to me, he wants the board to underscore that. It is an attractive feature. He wants to underscore Phil's creativity and his transparency because he thinks this is a really strong project and it is worthy of our consideration.

Howard Schaffer of Goodwin Road stated he has been in the energy business his entire career. This issue of 'not in my back yard' comes up with every project everywhere. What is raised is the larger societal issue that there is not any progress, there is not any change, without maybe having some effect on somebody for the positive good of all society. That is what the Board has to reckon with. Every Board and every regulatory commission has to wrestle with this balance. We are talking about progress and change so there is nothing unique to this project. That is what the Board has to consider. Sometimes it comes down to saying it's our turn to take a little bit of the impact for the greater good of the whole.

Karen Doran added that power lines have been attributed to problems with people. People with homes in the vicinity have had brain cancer, different types of cancer emitting from these big lines. She is for solar and thinks everyone here wants progress in the Town. But it is commercial in a residential and it does not belong there.

Mr. Scovner closed the hearing at 8:38 p.m. He asked to make one preface, one statement regarding the judging criteria. He said New Hampshire has no State rules governing solar parks. It is all left up to local control, in this case the Enfield Zoning. He added he is not here to pass judgment on solar energy per se but whether this particular project meets the variance criteria. The Board is going to sit and talk about the criteria. The public hearing is closed.

Mr. Scovner opened the hearing to the Board and they reviewed the criteria one by one.

In order to grant the variance there should be no diminution of the value of surrounding properties Ms. Aufiero agreed. Mr. Diehn abstained. Mr. Scovner summarized what he heard before. The Board heard there would be no diminution of value of properties but the Board heard the value of the grave sites will be diminished. If one is selling gravesites, in Mr. Scovner's opinion this would diminish their value. A more esoteric kind of thought was the visual tranquility. He and his wife went over to the cemetery about a week ago. He had no idea how beautiful it was. It is a beautiful site. He also wondered about the impact on people attending funerals there. He thought it was a specious argument to say the panels are shielded by trees. He did not hear any comment regarding whether these are deciduous trees or evergreens. From what he saw most of them are deciduous which means come

wintertime the leaves go and these become very visible. He is still not sure how this project is going to generate revenue in Enfield. In the application it is kind of specious, they say instead of collecting sunlight they produce plantlife which requires burning of fossil fuels and invasive species taking over. He does not really see that is anything other than funny-sounding words.

Granting the permit must not be contrary to the public interest.

Mr. Diehn did not think it is contrary to the public interest. Mr. Lenihan felt persuaded by the abutters that it is contrary to the public interest. Ms. Aufiero agreed. Mr. Scovner stated the only thing that did not come up, in the application it stated that the site has limited access to a main roadway. He was concerned about how emergency vehicles were going to get down there. If it is not accessed by a fire engine or ambulance, it is contrary to public interest.

Literal enforcement of the ordinance will result in unnecessary hardship as established by the following:

Special conditions of the property make an area variance necessary in order to allow the applicant to construct the development as designed. Mr. Diehn saw no hardship when he referenced the RSA 672 or 674:33, definition of hardship. Could not really find one there, either. The applicant listed the prevention of use of marginal land benefit. It is pretty clear a hardship has to actually be a hardship on the applicant and not on some third party. If it is a hardship on the Lutheran Church, it is unfortunate but they are not the applicant here. It has to be a hardship on the applicant. Ms. Aufiero does not see any hardship, nor did Mr. Scovner.

The spirit of the ordinance is observed

Mr. Lenihan, Ms. Aufiero and Mr. Scovner do not believe the spirit of the ordinance is observed.

Substantial justice will be done

Mr. Scovner commented that the applicant promises a long-term funding stream for the Enfield Lutheran Church. Funding is an abstraction. When one talks about funding is it about passing the plate around on Sundays or about major contributions? Funding is not defined here. How much funding is the applicant willing to promise in writing? Do they have a contract with the Lutheran Church stating they will be given X percentage of profits per year?

It will not substantially change the character of the neighborhood

Mr. Scovner thought it will substantially change the character of the neighborhood, particularly if those trees are deciduous trees. With the height of the panels, he thought in general with the nature of the business the character of the neighborhood will be substantially changed.

Mr. Scovner pointed out if any one of the criteria fails then the application fails and the Board will not be granting the variance. To pass there have to be three members voting in favor of a particular criteria.

Is there any diminution of value of surrounding properties?

4 yes, there will be diminution of value of surrounding properties.

Granting the permit must not be contrary to the public interest.

Mr. Diehn feels it is in the public interest. Mr. Lenihan agrees. Ms. Aufiero thinks it is contrary to the public interest based on the area, the spirit of the ordinance and being residential and the abutters all feel that it is in conflict with their own area where they live and impacts them, so she calls them the public. Mr. Scovner agrees with Ms. Aufiero. 2 yes, 2 no

Literal enforcement of the ordinance would result in unnecessary hardship  
4 no

The spirit of the ordinance is observed

Mr. Scovner stated when you have a commercial enterprise in the middle of a residential zone it is not in the spirit of the ordinance, so that is to say it is not being observed. Ms. Aufiero and Mr. Lenihan agreed. Mr. Diehn stated when Mr. Gotthardt said this commercial use is nothing like the commercial use on Route 4, he thought this use would be within the character of the neighborhood plan. He likes solar panels and likes having them in town. He thinks it is in the spirit of the ordinance. 3 no, 1 yes

Substantial justice will be done

4 no

Per Mr. Scovner, it will substantially change the character of the neighborhood.

Mr. Scovner stated it has already been decided the motion has been denied by the criteria.

***Mr. Lenihan made a motion that the variance applied for be denied based on there being a diminution of surrounding property, that granting the permit would not be in the public interest, that there is no hardship to the owner seeking it if denied, and that granting it would do substantial injustice to abutters, and that the use as applied for is contrary to the spirit of the ordinance. Mr. Diehn seconded the motion. All in favor: 4 aye, unanimous vote By a vote of 4-0 the application has been denied.***

## **V. COMMUNICATIONS AND MISCELLANEOUS**

Enter into record: Curtis E. Payne, Esq. is tendering his resignation as an alternate on the ZBA. The reference letter is on file.

**Next Meeting:** July 14, 2015. There are no hearings scheduled at this time.

**Adjournment:** Mr. Scovner made a motion to adjourn at 8:58 p.m. with a second from Ms. Aufiero. The motion unanimously carried.