

## Minutes for Monday, November 9, 2020 Planning Board Meeting

*Note: this meeting was held by video-conference as allowed by State of Maine emergency measures put in place in March 2020 in response to the COVID-19 pandemic.*

**1. Call to Order:** The meeting was called to order at 6:37 PM.

**2. Introduction of Attendees** - present were:

- **Planning Board (PB) Members:** Bill Graham (Chair), Laura Chadbourne (Secretary), Morris Gibley, Melanie Eldracher, David Johnson, and Alternate Member Lynn Hopkins.

**Additional attendees:**

- **David Galbraith**, consultant to Southern Maine Planning and Development Commission (SMPDC)
- **Darrin Stairs from Woodard & Curran** (engineering / project mgmt for Nexamp)
- **Ben Axelman from Nexamp**
- **Frank LaRosa** Landowner Map R-09 Lot 17 (Sweden Solar, LLC), joined at 8:30 PM
- **Mary Sohl**
- **Bruce Taylor**
- **Ardelle Foss**
- **Lucy Marx**
- **Perri Black**

**3. Minutes from the November 2, 2020 Meeting:** The minutes were reviewed by the group. David Johnson moved to approve the meeting minutes as written. Morris Gibley seconded the motion. The motion passed unanimously.

### **4. Review documents and information related to the Sweden Solar, LLC and Sweden Solar 2, LLC Conditional Use Permit Applications**

Chair Bill Graham opened this portion of the meeting with a summary of the purpose and process for the meeting which is for the Planning Board to have a working session for board members to review documents and information related to the CUP applications. It was not anticipated that any voting on the application would be taking place that evening. Since the public hearing portion of the CUP review had been conducted and closed on October 20th, the only people speaking at this meeting would be the board members unless a board member wanted to ask the applicant or SMPDC a question.

Secretary Laura Chadbourne added comments related to the Planning Board's role in reviewing and deciding upon the CUP applications. She quoted language from Maine Municipal Association's "Manual for Local Planning Boards: a Legal Perspective" (2017). She noted that the board must, "determine whether there is sufficient evidence in the record to support a decision to approve the application by comparing the information in the record to the requirements of the ordinance/statute." The decision must be based "solely on whether the applicant has met his or her burden of proof and complied with the provisions of the statute/ordinance", not on a subjective decision on whether a board member thinks the project is "good" or "bad" for the community. The board should also "not base its decision on the amount of public opposition or support displayed for the project."

PB member asked if the applicants were aware that town residents had voted down proposed ordinance language changes which would have excluded public utilities from having to re-apply for a conditional use if there were a change in occupancy or ownership. Would this change the path of the proposed solar developments? Ben Axelman of Nexmap responded that they were aware of the way the vote went. They would like to take the applications through to conclusion then determine what to do from there. Sounds like town may look at amending its Comprehensive Plan and Zoning Ordinance. Nexamp understands this and hopes to get approval here but if not will see what makes sense at that point. Perhaps amend or start new process.

A town resident asked someone to share what the vote count from the special town meeting on 11-7-2020 was against vs. in favor of the ordinance amendment language change. No one knew for sure, but one PB member thought it was about 34 against and 12 for.

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PB Secretary asked applicants for updates on items owed to the Board:

1. Revision of CUP applications to include the anticipated power generation from the developments (~5MW each). Darrin Stairs of Woodard & Curran noted that the change had been made and links to the new documents sent to the board just that afternoon.
2. Consideration to increase the forested buffer zone for the Sweden Solar, LLC property (Larosa property Map R-09 Lot 17) to 100 feet if at all possible. Darrin confirmed that they were able to accommodate that and that the plans had been updated to show the buffer now at 100 feet from the road. The links sent that afternoon to board members also included that change.
3. Payment of \$5,000 to the town to cover expenses for the CUP reviews: Ben Axelman stated the town should receive the check within a week.

The board then continued its review of evidence that would inform **Conclusions of Law** as outlined by the Sweden Zoning and Land Use Ordinance, picking back up at review of **zoning overlay districts** in the "X. Performance Standards" section of the Zoning Ordinance:

**"F. Aquifer Protection District (Overlay District)** This District contains those lands covering significant sand or gravel aquifers identified on the Maine Geological Survey Sand and Gravel Aquifer Map, as delineated on the Sweden Zoning Map. Land use criteria of the underlying Zone apply, except that the Aquifer Protection District land use criteria will prevail when the latter are more restrictive.

1. **Purpose.** To prevent destruction or pollution of Sweden's identified sand and gravel aquifers; and to minimize the detrimental effect of development and land use in areas overlying the aquifer.
  2. **Permitted Uses.** All Permitted Uses allowed in the underlying zone are allowed except:
    - o Open space off-road recreational activities involving motorized vehicles, other than the use of snowmobiles on existing trails.
    - o Agriculture
  3. **Conditional Uses.** All Conditional Uses allowed in the underlying zone may be allowed only upon approval of the Planning Board in accordance with the provisions of Section XIII. **CONDITIONAL USE.** In addition, the following require a Conditional Use Permit:
    - o Agriculture
    - o Spread of chemical fertilizer, herbicides, pesticides, and manure beyond that reasonably associated with home lawn and garden care
  4. **Prohibited Uses.** The following uses are prohibited:
    - o All uses not specifically allowed as Permitted or Conditional Uses
    - o Disposal or storage of solid waste, hazardous wastes, and leachable materials except for inside storage of materials accessory to a Permitted or approved Conditional Use
    - o Application of road salt on roadways, except Route 93, Knight's Hill Road, and Smart's Hill Road
    - o Any activity involving the application or use of hazardous materials other than normal household use for lawn and garden
    - o Aerial spraying of herbicides and pesticides
    - o Mineral exploration/extraction
  5. **Dimensional Requirements:**
    - a. Minimum Lot Size: 135,000 square feet (approximately three acres)
    - b. Minimum Lot Frontage: same as underlying Zone
    - c. Structure Setbacks: same as underlying Zone
  6. **Performance Standards:** same as for the underlying Zone, except as specified above. In addition a nitrate study is required prior to any development and/or construction."
- **Discussion:** Board reviewed on screen Appendix B Town of Sweden Water Resources and Wetlands Map to determine if either of the properties is in the Aquifer Protection District. The board determined that parts of both properties proposed in the CUP applications were located in the

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Aquifer Protection District. As such, the board noted that the applicants would have to provide a nitrate study to the board, or evidence to show that such a study would not be needed. Applicants assured the board that Nexamp does not use fertilizers, pesticides and fertilizers so there will be no nitrates impacting the aquifer, and will put that in a memo to the board.

**“G. Stream Protection District (Overlay District)** The Stream Protection District includes all land areas within 75 feet, horizontal distance, of the normal high water line of all non-intermittent streams appearing on the USGS Topographic Map, scale 1:24,000, exclusive of those areas within 250 feet of the normal high water line of a great pond, or within 250 feet of the upland edge of a freshwater wetland. Where streams are located within 250 feet of the above water bodies or wetlands, the standards for the district adjacent to that water body or wetland shall apply.

1. **Purpose.** To protect surface waters, reduce the potential for pollution of drinking waters, preserve and protect fish and wildlife habitat and breeding areas, and minimize the detrimental effect of development and land use in areas adjacent to streams.
  2. **Permitted Uses.** All Permitted Uses allowed in the underlying zone are allowed *except*:
    - Buildings or structures of any kind, other than those minimum stream crossing structures necessary for appropriate property access, trails, and timber harvesting activities
    - Home occupations
    - Recreational Vehicles
  3. **Conditional Uses.** All Conditional Uses allowed in the underlying zone may be allowed only upon approval of the Planning Board in accordance with the provisions of Section XIII. **CONDITIONAL USE, *except*:**
    - Buildings or structures of any kind
    - Home occupations
    - Mineral exploration/extraction
  4. **Prohibited Uses.** Uses not specifically allowed as permitted or Conditional Uses are prohibited.
  5. **Dimensional Requirements.** Same as for underlying zone.
  6. **Performance Standards.** Same as for underlying zone.”
- **Discussion:** The PB has determined that the parcel for the project known as Sweden Solar, LLC is within the Stream Protection Overlay District meeting the following definition: "all land areas within 75 feet, horizontal distance, of the normal high water line of all non-intermittent streams appearing on the USGS Topographic Map"
  - The proposed project within the Stream Protection Overlay District does not include any of the Conditional Uses that are not allowed as follows:
    - Buildings or structures of any kind
    - Home occupations
    - Mineral exploration/extraction
  - The applicant provided a memo dated 10-27-2020 which states: "In accordance with Section VIII.A.1.d.(2) of the Town's Zoning and Land Use Ordinance, Phosphorus control is required for new construction projects in lake watersheds that are within 500-feet of any stream. The proposed projects are located within the Kezar Pond watershed and are within 500-feet of Popple Hill Brook and are therefore required to provide Phosphorus control. Section X.Y.3. of the Town's Ordinance lists several methods of Phosphorus control, including maintaining an existing undisturbed natural wooded buffer strip between the structure and the water body that is at least 50-feet in depth. As shown on the drawings, a minimum 100-foot wooded buffer will be maintained between the proposed projects and Popple Hill Brook. A natural wooded buffer such as this is the Maine Department of Environmental Protection (DEP) preferred Best Management Practice for Phosphorus Control, as noted in the DEP Manual for Phosphorus Control in Lake Watersheds."
  - The PB asked David Galbraith of SMPDC to provide an opinion on the 10-27-2020 memo from the applicant. In a memo from Mr. Galbraith to the PB dated 11-8-2020, he stated, "I have reviewed the

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submitted narrative in conjunction with both of the plan sets as provided in the applications and have determined that the applicants are providing phosphorous control measures established under the Maine Department of Environmental Protection (DEP) preferred Best Management Practice. As such, I recommend that the Planning Board find that this requested item is complete.”

- The PB discussed and agreed that the explanation from the applicants and endorsement from SMPDC provided evidence to satisfy the board that the applicants had met this performance standard.

**“H. Forest Conservation District (Overlay District).** The Forest Conservation District is configured as a floating overlay district comprised of separate important forest parcels (of at least ten acres) of the Residential, Rural Preservation, and Natural Resource Protection Zones, voluntarily joined by participating property owners. Such tracts are agreed to be held and managed as long-term timber stands, suitable for future sustainable timber harvesting and enhanced preservation of rural character until such time as voluntarily withdrawn from the District. **The District may include parcels** such as formal land trusts, conservation easements, conservation-specific deed covenants, and those **enrolled in the Maine State Tree Growth Program.**

1. **Purpose.** To encourage and acknowledge stewardship and protection of certain identified and available forest resource lands for: future long-term forest conservation and sustainable forestry management; preservation of wildlife habitat, scenic vistas, and other natural aesthetic qualities; providing opportunities for minimally-intrusive outdoor recreation; and establishing a core anchor for Sweden’s rural character.
  2. **Uses.** Permitted, Conditional, and Prohibited uses, to include associated performance standards for the underlying zone.
  3. **Management.** Forest Conservation management and sustainable harvesting remains the responsibility of respective individual landowners, in accord with any former agreements, and subject to all provisions of the Sweden Zoning and Land Use Ordinance.”
- **Discussion:** the PB determined that the Sweden Solar, LLC at Map R09 Lot 17 has 145 of 150 acres currently in Tree Growth until 2023 (see Tree Growth Application Schedule dated 3-19-2013). Maine Revenue Services Property Tax Division Tax Bulletin No 19 Maine Tree Growth Tax Law further explains the Tax implications of the agreement. The board determined that it will be the responsibility of the landowner to inform the tax assessor should some or all of the parcel be withdrawn from Tree Growth for purposes of the project, which is expected if the application is approved. The PB asked Mr. Larosa and the applicants if they were aware of this requirement. They both agreed they did.

The board then reviewed a list of draft considerations for potential conditions to attach to an approval of the CUP applications should the applications be approved. PB Secretary re-iterated that no votes had been taken yet to approve, deny, or approve with conditions the two applications, but that if they were approved, the board would want to consider conditions to attach to them and that was the purpose of the discussion. The following draft conditions were reviewed by the board:

1. The applicant shall provide the rated capacity of the solar photovoltaic and electrical interconnection system on the application. Drawings supplied reference a 5.0 MW AC capacity system. DEP documentation states 5.0 MW. **Noted at meeting that this has been completed.**
2. The applicant will abide by the DEP Site Location of Development Act and its findings and conclusions Solar Facility L-28563-PS-A-N (approval). **No discussion. Point of this is to ensure applicants do what they promised in the application and site plans.**
3. The applicant will provide documentation that it has the finances in place to begin this project in a timely manner and with sufficient funds to bring it to completion. **Discussion: idea is to obtain evidence of the financial backing. Not intending to replace DEP bond – the bank is one of the top 5 in the world. Applicants note that DEP requires that they provide a letter to this effect demonstrating financial ability.**

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4. The applicant will provide a performance guarantee to ensure that it, as well as its subcontractors, have the financial and technical abilities to bring the project to completion in a timely manner. The applicant will provide documentation for all insurance on this project, liability as well as workman's compensation insurance. **Applicants are happy to provide a certificate of insurance and resumes / bios of companies and project manager(s) working on the development. Concern that work can be shifted to sub-contractors who don't have the appropriate experience / insurance.**
5. The applicant will provide funding for a decommissioning plan when this project reaches the end of its useful life. Applicant shall provide proof that it has the funding resources to decommission the plant within a period of one year from the decision to take it out of commission. The costs to decommission should have a cost escalator to cover inflation factors and the cost estimate shall be reviewed at five-year intervals and adjusted accordingly. If the energy plant ceases to provide power or if it is abandoned by the owners, the decommissioning process will be completed within six months of that event. [PB Secretary addition: Site shall be considered abandoned if it does not generate electricity for a period of 6? 12? Months] **Discussion: DEP requires this decommissioning plan and bond. Concern is that town also needs protection to ensure timely decommission when needed. Does DEP have escalator clause? SMPDC – typically it's one bond, applicants won't want to have two bonds. Applicants: DEP bond typically is enough. SMPDC – town can call the bond from the state if things go the wrong way. Coordination with DEP is a way to address this.**

**Ben Axelman will confirm if the bond held with Maine DEP contains an escalator clause or some other periodic review / increase provision and will let the board know.**

6. The Town of Sweden will consider this development in its property tax base. Our real estate valuations are based on a third-party company that provides assessment services to the town. The State of Maine has a program to provide developers with a solar tax credit. The town will coordinate with the state on taxes that will be due on this installation. **Concern: risk of lack of state funds and therefore no financial benefit to town. Applicants are talking with legal counsel to provide a proposal (memo of understanding) – potentially make a payment to town unless / until laws change and revenue comes directly to town (i.e. as an excise tax). SMPDC – offered to look at what other towns have done / language that addresses this.**

**Ben Axelman will provide a draft memo of understanding (or similar) proposal to the board which would outline how applicants would make the town whole with a fixed payment should expected tax revenue from the developments not materialize.**

7. If the development of this project does not start within two years of the design review and Conditional Use Permit issued, this approval will expire and the application process would have to start over. **[PB Secretary's note: Sweden Zoning Ordinance (page 50, XIII. Conditional Use; G. Decisions) provides for this condition and is more stringent: "A Conditional Use Permit secured under the provisions of this Ordinance by vote of the Planning Board shall expire if the work, change, or use is not commenced within one year of the date on which the Conditional Use is authorized, or if the work is not substantially completed within two years of said date."]** **applicants: agree, no issue**
8. Energy system shall be maintained as necessary to ensure that it is operating safely and as designed and approved until it is decommissioned. **Applicants can provide operations and maintenance plan to the town. Regular visual inspections, mowing, monitor production (online) to detect issues and can send someone out if anything amiss.**
9. Applicant will show evidence that it has agreements with landowners for the solar development and that there are no covenants or liens on stated property. **No issues.**
10. Under current ordinances for the Town of Sweden, this conditional use permit expires when there is a change of ownership or use of the property. [cite relevant section of Sweden ZO] **standard condition**

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11. The applicant will allow access to the site for the town's Code Enforcement Officer, Fire Chief, and other designees to inspect the development before, during, and after construction to ensure the development conforms with the application materials and site plans. **No issues**
12. Within 90 days after completion of construction, applicant shall provide an as-built field survey plan and a letter from a Maine licensed Professional Engineer or Professional Land Surveyor to the CEO certifying that the solar facility had been constructed in accordance with all Planning Board approvals, including any conditions of approval and any accompanying plans and specifications, or otherwise have the letter note the significant differences. **Nexamp does this anyway so can provide to town, no problem. SMPDC - Most of work is clearing, grubbing, seeding, and concrete pads, then panels. Could have CEO inspect or site engineer do so. Could get letter/memo from applicant's site reports and copy town. Sometimes DEP asks for them as well so town could be copied. SMPDC believes this would be adequate. At end, they do punch list with contractor.**
13. All solar related facilities and equipment shall be maintained, repaired, and replaced in a manner consistent with industry standards. This may include but is not limited to painting, structural repairs, vegetation control, and the integrity of security measures (i.e., Knox box and keys). The site shall be well-kept and all debris removed in a timely fashion. Applicant shall be responsible for the cost of maintaining the access road to the site as well as costs of maintaining the system itself. **No issues.**
14. Applicant will identify a responsible person to the town (who would typically be contacted by the CEO, Fire Chief, and/or Select Board member) for public inquiries throughout the life of the installation and will promptly notify the town when such contact information changes. Best efforts will be made by this contact to respond to inquiries from the town within 5 business days. **No issues – typically construction site manager to start, then a facilities contact going forward.**
15. Applicants must obtain a no-fee driveway permit from the CEO for the access road prior to beginning any construction activities **no issues**
16. Applicants must obtain a temporary building permit for any temporary structures (i.e., construction trailer or other) prior to installing such structure. **No issues**
17. NOTE: reach out to SVFD chief to see what other information he may require, and whether the applicants should work together with the FD to develop an emergency response plan. **Bill will reach out to Tim.** Possible conditions: **applicants see no issues**
  - a. Applicant will provide a key to the Sweden Volunteer Fire Department so that access to the site will not be impeded in the event of a fire or other emergency.
  - b. Applicant will provide first responder training to the Sweden Volunteer Fire Department (and other local municipal aid units if needed) within 30 days of completion of all construction activities.
  - c. Site access will be maintained to a level acceptable to the Fire Chief.
  - d. Applicant will prepare a plan for fire, life, and safety of the facility as well as a first responder plan. This plan will be reviewed with local authorities and training will be provided.
18. Applicant will pay 100% of the costs for the Planning Board's review of the application before any construction activities begin. Should additional costs be discovered after construction begins, applicant will reimburse the town within 30 days of receiving a request for payment. **No issues**
- ~~19. Applicant will be responsible for costs incurred by the town to hire qualified professionals for a third-party inspection of any and all components of the construction as deemed necessary by the CEO. Applicant will reimburse the town within 30 days of receiving a request for payment. **Removed as was**~~

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**covered above with applicants willing to copy the town on site engineer reports plus the as-built field survey.**

20. Applicant will update both CUP applications with the revised salvage values that were submitted to the Maine DEP as noted in a letter from Woodard & Curran to James Beyer of the Maine DEP on May 6, 2020. **No issues**
21. Applicant will provide a Phosphorus Control Plan (PCP) to the Planning Board prior to start of any construction activities, or provide evidence that such a PCP is not needed. **Remove, covered previously**
22. Applicant will provide results of a nitrate test as required for activities in an Aquifer Protection District as required in the Town of Sweden Zoning Ordinance which states that a nitrate study is required prior to any development and/or construction in this overlay district. **Remove, covered previously**
23. Applicant will provide evidence of deed restrictions for meadow buffers used to treat the storm water from the access roads. **[PB Secretary note: the deed restrictions were requested by the Maine DEP in a 2/27/2020 email from James Beyer to Woodard & Curran. Woodard & Curran responded in a May 6, 2020 letter to Mr. Beyer that, "We respectfully request that deed restrictions be made a condition of approval." Applicant: that is something done already, typically are temporary deed restrictions such that when decommissioning occurs and the road is removed, restriction lifted. Applicant can provide copy to town.**
24. Applicant agrees to provide educational opportunities to the local community [discuss details w/ applicants] **Applicants: typically do site walks with classes, talk about the array – may not need to be a condition of the application but they are happy to provide this. SMPDC – typically not a condition of approval, but can let school districts know and they can reach out to Nexamp.**
25. Applicant will ensure that all reports produced for public agencies by the solar facility operator will be simultaneously submitted to the CEO. **Not an unreasonable burden. Maine DEP sometimes asks for copies of site reviews and as a matter of course, the town would be copied.**
26. Applicants will provide the town an operations and maintenance plan which shall include measures for maintaining safe access to the installation as well as other general procedures for operational maintenance of the installation. **Covered above**
27. Applicant will ensure that any inspection logs of the development site, including logs of all stormwater and erosion control facility inspections, and of any maintenance performed, shall be provided to the CEO upon request, ~~but no less than annually.~~ **Removed the requirement to proactively provide information, but applicants are happy to provide upon request.**
28. Applicant will notify the CEO in writing if the decommissioning bond is revoked. **Applicants are comfortable with obligation of letting town know if this happens.**
29. Other considerations to discuss:
  - a. ~~A Site Electrical Plan shall be submitted by the applicant (was this part of the site plans? Doublecheck)~~ **Removed. CMP is provided this and they have many requirements. Board trusts that CMP will provide appropriate oversight.**
  - b. ~~Prior to operation, electrical connections are inspected by CEO or other designee, or state electrical inspector as required. (needed?)~~
  - c. ~~Connection to public utility grid must be inspected and approved by the appropriate public utility unless waived by the public utility. (how is this handled?)~~
  - d. ~~Re-seeding mix under solar panels will be pollinator-friendly. (doable?)~~ **Issue is that "pollinator-friendly" is not officially defined term. Proposed seed mix is on plan and DEP**

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looked at it. Mix of native grasses, clovers, etc. Often called conservation seed mix. SMPDC – suggest adding verbiage “seeding and maintaining”

- e. No herbicides or pesticides will be used within the development area unless prior written approval obtained from the CEO. (doable?) **no issue**

**30. Additional discussion: height restriction with flexibility, applicants fine with reasonable height (i.e. no more than 15 feet from grade).**

**31. What about indemnification / hold harmless clauses? Typically included in lease agreements with landowners but not usual in permits. SMPDC – not typical. If something happens on property, usually between property owners and development operators. Town would not own infrastructure. Agreed would not need to include.**

PB Chair board members and SMPDC if any other conditions should be considered. Nothing further was raised.

PB member asked to revisit a performance standard that the board had discussed at their last meeting: “N. Public Utilities”, specifically that the Ordinance requires that that the applicants provide “evidence that such construction, extension, or enlargement is **needed** to serve the welfare of the residents of the Town of Sweden.” Member sees benefits but doesn’t see evidence that this use is needed. Another PB member reiterated the benefits – lower taxes, bring services like better roads and potentially funding to construct a new fire station for the town. Also benefit to society. This is a broad-based statement, almost a philosophical discussion. One could argue that even electricity itself is not needed and CMP isn’t needed b/c you can light a fire in the fireplace and light your home with oil lamps. Discussion about “industrial” and is this considered industrial? Town wants to avoid noise, pollution, glare, traffic, etc. This fits with solar. Whether it’s this project or not which remains to be seen.

Discussion continued to what the specific financial benefit would be and whether that was considered in the list of “benefits”. A PB member felt that financial benefit wasn’t relevant to whether the applicants met the “burden of proof” requirements outlined in the Zoning Ordinance (ZO), and asked SMPDC to advise. Mr. Galbraith advised that the board focus on the allowed uses in the ZO.

**Laura Chadbourne made a motion that the board have David Galbraith of SMPDC review the draft considerations for conditions and update the language as needed so it would be appropriate to include in formal conditions should the Board vote to approve the CUP applications. David Johnson seconded. The motion passed unanimously.**

### **6. Announcements:**

- A. The next regular Planning Board meeting is scheduled for Tuesday, November 17, 2020 at 7:00 PM and will be held via video conference. It was noted that the board anticipates voting on the CUP applications at that meeting.

A motion was made to adjourn the meeting. The Chair adjourned the meeting at 8:40 PM.

Respectfully submitted,

Laura Chadbourne,  
Secretary, Sweden Planning Board