

Town of Lincoln Planning Board – Meeting Minutes
February 16th, 2011 – 6:00 pm

Present: Chairman Pat Romprey, Vice Chairman Joe Chenard, Clerk Jim Spanos, John Hettinger, Peter Moore, Charlie Cook, Tom Adams, Deanne Chrystal,

Staff Present: Planning & Zoning Administrator Matt Henry, Town Manager Peter Joseph

Excused Absences:

Others Present: Scott Hogan, Rob Curgin, Jay Bertelli, Susan Chenard, Paul Beaudin, Douglas Smith, Gay Crowley,

I. CALL TO ORDER by Chairman Pat Romprey at **6:00PM**;

Chairman Pat Romprey called the meeting to order.

II. CONTINUING & OTHER BUSINESS (Staff and Planning Board Member/Alternates).

A. Westwood Homeowners Association (WHA) – South Peak Security Gate

John Hettinger and Joe Chenard removed themselves from discussion. Tom Adams replaced Joe Chenard. John Hettinger is a member of the Westwood Homeowners Association and Joe Chenard performs work for some of its members. Scott Hogan, attorney for WHA, introduced himself to the Planning Board and thanked them in advance for allowing him to speak. Scott Hogan is a land use attorney who has represented all different clients in land use. He said that what he will be discussing today are the implications of the installation and use of a security gate in 2008 by Terramesa Resorts (formally known as Centex Destination Properties) and the pass-through of vehicle traffic through the Westwood neighborhood.

Scott Hogan began by showing the Planning Board a map of the area in question. He pointed out where the security gate is located and said that traffic pattern changes are a major result of the security gate being installed. Chairman Romprey asked if the case is currently in litigation. Scott Hogan said that there is no pending litigation as of now. There is litigation regarding the Highland Games, however it was exclusively for that event and the issue is no longer in court. Deanne Chrystal asked what the result of the litigation was. Scott Hogan responded by saying that the WHA was seeking an injunction to open the gate. The WHA had to prove “immediate and irreparable injury” resulting from the security gate. The court ruled that the WHA did not meet the standard. Douglas Smith, president of WHA, said that there were two issues in dispute. One of which was to open the security gate for the Highland Games, which Terramesa agreed to do, so it turned out to be a non-issue. The second issue was related to traffic passing through and that issue was defeated because the impact was not proven to be “irreparable”. The judge denied the injunction and said that the matter seems like a case meant for a regular court trial.

Chairman Romprey asked if a written agreement between the two parties exists. Scott Hogan responded that there was a memorandum of understanding that was signed in 2004 setting up a private framework that the two parties would work under. It also set up a cooperative process where we would be notified of any changes to their traffic management or traffic patterns as well as definitions regarding what vehicles were allowed to pass. Scott Hogan said that it was not something he intends to discuss at this meeting. Tonight he wished to discuss specifically what was in the Planning Board’s jurisdiction.

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Scott Hogan said that the security gate that was installed denied access to a road and the Cooper Memorial Bridge which members of the association had been using for 20+ years. The second issue WHA has is the manner in which traffic is routed through the Westwood neighborhood as a result of the security gate. WHA's position is that this is a blatant violation of the Town of Lincoln Site Plan Review Regulations because neither an amendment to the Master Plan, nor Site Plan Review had ever taken place. He said that the original South Peak Master Plan never showed a secondary means of access through the Westwood neighborhood. The Master plan originally shows the Cooper Memorial Bridge as the only means of access to South Peak. Douglas Smith showed the Board a diagram from the Master Plan's traffic study to support their position.

Scott Hogan said that the Planning Board's own Site Plan Review Regulations cite "Material Change, Development, Change of Use, and Expansion of Use" as the triggers for Site Plan Review. This security gate should have gone through Site Plan Review, abutters should have been notified, a separate traffic study should have been conducted as a result of this change of use. Because South Peak is not yet close to being fully built out, the impacts of these access points are only going to become far more pronounced in the future.

Scott Hogan said that in July of 2008, a representative from South Peak came to the Planning Board and had an informal discussion with the Board about the security gate. The Planning Board asked for an agreement from town public safety officials regarding emergency access but did not request Site Plan Review. Chairman Romprey asked if there was a permit filed. Matt Henry said that there was.

Tom Adams asked if MDR South Peak is the same entity as Terramesa Resorts. Scott Hogan responded that they are.

Scott Hogan said that though the July 2008 minutes state that an MDR South Peak representative discussed an amendment to the Master Plan for the security gate, but that upon talking with town staff Scott Hogan found out that an amendment to the Master Plan had not taken place that evening. The Planning Board took no formal action on the security gate and thus a Master Plan amendment could not have taken place. On the building permit application, there was an attached letter from MDR South Peak saying that the security gate was "presented and approved" by the Planning Board. Scott Hogan said that this approval never happened, or at most was an exaggeration. Chairman Romprey agreed that the MDR South Peak letter seems misleading.

Scott Hogan said that at the July 2008 meeting, the Planning Board asked to see something in writing between public safety officials and South Peak regarding emergency access. As far as they know that was not done either. Matt Henry clarified that while he was not at the meeting and does not know what the Planning Board expected with regard to an agreement, the minutes do not necessarily state that the Planning Board asked for a "written agreement" but simply an "agreement".

Scott Hogan said that the July 2008 minutes do state that many of the Fire Department's concerns have been met but do not go into the Police Department's concerns. Scott Hogan said that the Fire Chief had less concerns so long as they have access to the road by a remote. If the gate were to malfunction the fire truck would ram the gate if necessary in order to respond to the

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emergency. Scott Hogan said that he had spoken with Police Chief Ted Smith (no relation to Doug Smith) who had some serious concerns with the security gate, particularly with regard to remote access for his cruisers. Douglas Smith said that another one of Chief Smith's concerns were related to off-peak times when the Town of Lincoln may receive backup from an abutting town's police or a state trooper. They would not have the "clickers" that would allow them into the gate. It is Douglas Smith's opinion that the Police Chief's concerns were not met. Additionally, emergency response time has now changed and therefore should have been discussed at a Site Plan Review with an amendment to the traffic study.

Chairman Romprey said that they are discussing issues such as vested property rights and rights to pass (among other things) are often legal doctrine that the Planning Board has little jurisdiction. Therefore, the issue will be turned over to the Town Attorney without further comment this evening.

Douglas Smith submitted the following records to the Board:

- 1) Petitions signed by 37 of 38 WHA members expressing opposition to the security gate
- 2) A letter drafted by Scott Hogan summarizing WHA position on the security gate.
- 3) Letter written by Larry Sinsimer, president of the Loon Mountain Residents Association, regarding the Security gate dispute.
- 4) Letter written by Ed Brisson regarding construction vehicle access to South Peak
- 5) Photo of South Peak Sign stating "No Construction Access to South Peak"

III. CONSIDERATION of the Draft Meeting Minutes of 01/26/2011.

MOTION: Peter Moore made a motion to approve the 01/26/2011 minutes. Peter Moore seconded the motion. The motion carried unanimously (5-0-0).

IV. REVIEW AND COMMENT on the MATRIX REPORTS and OPEN FILES pertaining to:

- A. Building Permit Applications
- B. Land Use Subdivision and Site Plan Applications/Approvals
- C. Sign Permit Applications
- D. ZBA Applications

Matt Henry handed out the official ballot for 2011. He said that the only clerical change that was made was assigning specific questions to each sub-question in Amendment number 6. Joe Chenard said that the wording does not clearly state what is amended in the question. Matt Henry agreed but the RSA is specific about how it should be worded. Matt Henry said that is why there is a better description underneath each question as well as a statement of intent.

Matt Henry passed out a memorandum describing a possible grant opportunity available through the EPA where the federal government will provide technical assistance to communities in order to implement "smart growth". The grant is through services rather than a dollar amount. There are a number of tools that communities could choose from but the most relevant in his opinion is "Tool #6: Smart Growth to Produce Fiscal and Economic Health". This could be helpful in drafting the Economic Development section of the Master Plan as well as giving attention to the vacant business park. All it would cost would be related to advertizing and supplies such as paper, pencils etc. The

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Board agreed “Tool #6 was most relevant and instructed Matt Henry to write the letter of intent for the grant.

Matt Henry passed around a letter sent to Edmong Gionet regarding the house bill that the board asked Matt Henry to write a letter of opposition for. Matt Henry said that he was happy to report that the status is “inexpedient to legislate” which means it most likely will not make it out of committee.

V. PUBLIC INPUT on Specific Issues

VI. ADJOURNMENT

The meeting was adjourned at 7:05 pm.

Respectfully submitted,

Matt Henry

Dated: March 16, 2011

Pat Romprey, Chairman