

Town of Lincoln Planning Board – Meeting Minutes  
March 10, 2010

**Planning Board**

**Present:** Pat Romprey, Selectmen's Representative Peter Moore, Charlie Cook, Tom Adams, John Hettinger, Jim Spanos, Deanne Crystal

**Staff Present:** Town Manager Peter Joseph, Helen Jones, Town Attorney Peter Malia

**Others Present:** Paul Hamel, Walter Rodgers, Robert Duval, Kristin Clouser, Ron Caron, Liz Lambregtse, Russ Cooley, Justin Diagneault, Scott McIntyre, Tamra Ham, Chad Kel, Kevin MacNamara, Joe Chenard.

**CALL TO ORDER** at 6:00 pm by the Chairman Pat Romprey; Deanne Crystal arrived late and Joe Chenard excused. Alternate Charlie Cook was seated.

Minutes of February 24, 2010 would be considered at next meeting.

**CONTINUATION** of an application for Site Plan Review submitted by Andrew Nadeau for Lincoln South Mountain Partners, LLC (Tax Map 118, Lot 003)

Proposal: Seeks approval to divide existing parcel of land into parcels.

Planning Board: Acceptance of the Completed Subdivision Application.

Public Hearing: Approve or Disapprove the Completed Subdivision Application and

**CONTINUATION** of an application for Site Plan Review submitted by Andrew Nadeau for Lincoln South Mountain Partners, LLC (Tax Map 118, Lot 003)

Proposal: Seeks approval to construct 5 buildings with twelve (12) units in each building.

Planning Board: Acceptance of the Completed Site Plan Review Application.

Public Hearing: Approve or Disapprove the Completed Site Plan Review Application

Peter Malia stated that the public hearing has been closed in regards to this case and the board is about to begin deliberation on whether to approve this application. He suggested the following procedure for tonight: go over the work sheet of potential condition of approvals. These are the conditions you would want to impose on the applicants if approved. There are two types of conditions: precedent and subsequent. Conditions precedent is conditions that need to be for filled before the planning board can grant final approval. Like drive way permits, letter from DES and other documents that need to be obtained by the applicant before final approval is made. When talking about the conditions they need identify if it is a precedent that needs to be for fulfilled before approval and if so set up a time when the conditions needs to be completed. A subsequent condition is a restriction on the use of the property or something that safeguards the property, which is something that has to be observed: like condition of the road. Subsequent conditions have to be met after final approval and are those that applicant must comply with. New Hampshire law allows planning board chairmen to grant final approval if all the conditions are administrative in nature such as providing

you with documents. If any of the conditions are subsequent in nature and open to interpretation then you, as a planning board, should have one more public hearing before final approval.

Ronald Caron asked to address the board in that he was not under the impression the public hearing had been closed. A short discussion with the board in regards to the issue of the February 24, 2010 meeting of the public hearing, noted that at all meetings they open and close public participation. The board did approve to continue public hearing on this case at that time. The board will postpone the discussion of the conditions Peter Malia went over and the board will hear from Attorney Caron and then give the applicant time to respond along with anyone else. Peter Malia asked if the discussion would be limited to new issues. Pat Romprey asked if this was going to be a rehash of what had been discussed over the last four meetings or were they going to bring up something new. Ronald Caron stated that he intended to express the concerns of the Fairways and the 4 of the lot owners on Bunker Lane.

Ronald Caron distributed an outline of issues pending – copy attached. Ronald Caron proceeded to go over the list and to address other alternatives that have not, in his opinion, been explored by the board. To bring these issues to the boards attention to help the board make the correct decision. On February 24, 2010 Mr. Duval presented three reports: one was TF Moran Report regarding drainage & storm water management, the Haley & Aldrich Report on environmental conditions and the West Environmental Wetlands issue memo. This should be part of the board's record and Attorney Caron presume the board has reviewed them. The simple solution the board is facing on the development of the property question in the opinion of the Fairways and Bunker Lane owners are alternate egress and ingress, drainage, and environmental issues. At the last hearing it was suggested that the report would be sent to Mr. McCluskey. As of this date Mr. McCluskey has not received these reports. The reason this is important is the content of the reports. The Haley & Aldrich report shows three things (1) not enough test pits to properly characterize the site; (2) materials management plan should be a PRE-condition to approval and (3) storm water and flood impact risk. He mentioned the alternation of terrain yields unmitigated increase of flood risk and the Nov. 2007 Army Corps suggestion that the levee is in "unacceptable conditions". In the 2007 proposal made by these applicants the board had suggested some indemnification and Mr. Caron would like the board to consider what that really means. To suggest that "Lincoln South Mountain" indemnify the town under circumstances where the existence of "Lincoln South Mountain" may not even be around at any time flooding may take place suggests the town is essentially recognizing the Corps of Engineers concerns about the levee and passing those on in the form on indemnification promises by developers is not appropriate. If the board sees enough of a risk regarding the levee to demand a promise to indemnify the loss during flooding what does that mean? The board sees it as important enough and enough of a risk of a flood that it is demanding from an applicant to give an indemnification. It is important that the board understand in 2007 it recognized that and it should today. In his understanding the meeting of February 24 Mr. Lafrance suggested that he would not recommend to Lincoln South Mountain Partners (LSMP) that they grant indemnification.

McCluskey report – Mr. Joseph from the February 24 meeting indicated that Mr. McCluskey was curious about whether more than wood ash was on the property. It was indicated that DES should have their report ready for this meeting tonight. We have not seen the report. Mr. Joseph responded that it should be ready. It is a great concern to Mr. Caron that DES had not reviewed the Haley & Aldrich report.

Mr. Caron would like address the developer's responses to inquiries of the board when Mr. Romprey was not here, where there were several issues that the board asked Mr. Lafrance to address. A board member made a statement that implied his clients were raising concerns under self-interest to stop construction just because his clients do not want it. There are continuing issues that are of real concern pertaining to drainage, wetlands, ingress and egress.

Mr. Caron continues with some of the questions asked of the applicant:

Pump Station - a suggestion was asked that there must be an agreement between the applicant and those who have rights to use the water and sewer through Bunker Lane. Even if the board approves and the Superior Court agrees to the egress and ingress there still will be a need for some type of agreement on the terms in which LSMP may connect to water and sewer lines.

Public Safety – the superior court is not treating this issue; they are only dealing with the legal right to cross over Bunker Lane. He recommended that the board not make a decision on the safety on Bunker Lane, compared to other projects in the town. John Hettinger assured him that they were not.

Shore Land Exemption – Mr. Lafrance indicated on February 24 that he had secured or confirmed with an e-mail that the proposed development was exempt. He would like to make sure the exemption is included with the application from the applicant.

Recreation Trail – it is not his opinion that the town has the right of access through the Fairways Property. No response has been made in regards to a letter sent to the Fairways. Mr. Caron said he had seen the letter and does not have an answer. Pat Romprey reminded Mr. Caron that the Recreation Trail had nothing to do with this case.

A comment was made at the last meeting that with respect to the traffic going through Fairways, that additional condo where originally planned to be built on Bunker Lane. Mr. Caron commented that the original Fairways condo had 38 units and 14 units would be around the cul-de-sac near the start of Bunker Lane.

Mr. Caron's hope is that the very least the board continues to derive and learn of the responses from DES on the Haley & Aldrich report. The concern of his clients, while regarded by the applicant to be obstructive, is not so designed. These issues could be resolved by having the applicant find another ingress/egress for the project.

Peter Moore appreciated the comments, he would like to express that the Board does take safety on the road seriously. He asked what are the other goals of Mr. Caron's clients besides ingress/egress. If they change the road does the issue of drainage still a concern? Mr. Caron replied drainage would still be an issue as to the way the buildings would be constructed to avoid flooding on property surrounding the buildings.

John Hettinger said the applicant would have to get alteration of terrain permit and give full detail to DES or FEMA of what they are filling in. In order for the applicant to get a permit, the DES or FEMA will not only look at the area being filled in, but also what will happen to the surrounding area.

Pat Romprey read a list of Flood Plain criteria that is established for approval:

1. Applicant needs to acknowledge current flood plan on ATP application
2. Project needs sealed utilities for 100 year flood plan
3. How should ATP be handled due to flood plan changes
4. Town requires detail building plans, filed and stamp by a qualified structural engineer showing building being built to standards described in the land use ordinance, flood plan development district or approved low mar or FEMA for buildings being built in the 100 year flood plan.

He continues that the board has not neglected any of this; these are all the questions they plan on going over tonight.

Mr. Caron asked the question if an applicant is imposed with the conditions of the alteration of terrain permit does that necessarily end the question of the effect of caring out that permit or does not the board still have the right to take a look at the effect? Peter Joseph reminded them that they are looking at two different flood plains, current and proposed floodplains. The Town has been told to consider the plains under the current flood plains until the Board of Selectmen approve the new flood maps. The Town was told to inform DES that the Town was going through flood plain changes.

Peter Maila stated the board had two options (1) grant approval conditional of alteration of terrain permit or (2) do not grant until you see alteration of terrain permit.

John Hettinger asked who would they accept approval from: DES, or an engineer?

Chester Kahn stated they would accept DES. Robert Duval felt maybe a third party. Both were concerned about how LSMP design will affect abutters.

Justin Diagneault, from Horizon said that DES, through the alteration of terrain permit, will consider the flood plain, they will be aware of the currently purposed flood plan and they do consider the flow leaving the property and it's affect on abutters down stream. We are looking for approve conditional to the alteration of terrain permit. Robert Duval said this was incorrect that DES will not consider the affect of the 100 years flows down stream of abutting properties.

Pat Romprey asked the applicant if they had any other comments. No comments.

Peter Maila asked Russ Cooley if they planned to connect to other utilities in the right of way. Russ said that was part of the deed they have a right to the use of the underground utilities with the obligation to share in the cost of upkeep.

Charlie Cook stated there is no clear owner of the utilities, no joint association. Liz Lambrecht stated the number of bedrooms in each entity was used to divide costs.

Joe Chenard asked who owns the pipeline from pump station to sewer treatment facility and who will maintain it. Pat asked Russ if he had done any research on this issue. He had not, but he assumed they would pay their share of the cost to maintain. Chester Kahn said it was the position of the Fairways and Bunker Lane that they would require any new applicant that would be adding to the system to help pay for the new pump station just installed.

John Hettinger asked Russ if they could use the old sleigh road to move equipment in and out. Russ mentioned the wetlands, a water crossing and stumps as issues. Chester Kahn mentioned that they had a plan and approval to enter this way before, why can't they do it now? Russ said it was re-permitted for the new design. Mr. Caron asked about the cost of going through Bunker Lane versus off Cooper Memorial Drive. Mr. Caron would like to know what the cost is. Russ felt they have the right to use Bunker Lane.

Peter Malia addressed that the current project, as proposed, is to have access to Bunker Lane, for construction equipment. The applicant was asked to use the alternative route for his construction equipment, which the applicant has declined. It is up to the board to decide if Bunker Lane is OK to be used for construction equipment.

Jim Spanos made a motion to close the public hearing: Seconded by John Hettinger. Approved by all members

Peter Malia stated the public hearing has been closed and the board now deliberates in public but the public does not have any rights to speak unless the board has a direct question. The first thing they might want to consider is to continue this meeting until next month when they have more information for DES and Mr. McCluskey before proceeding with consideration of conditions.

John Hettinger made a motion to continue this hearing until April 14, 2010: Seconded by Jim Spanos. Approved by all members.

Peter Malia went over that the motion was to continue the hearing until April 14, 2010 and now it is time for discussion. Peter noted that John Hettinger made the motion, the reason for discussion you would like to hear from Mr. McCluskey before you start considering. The motion is now open for discussion. Then you can take a vote after the discussion.

Peter Joseph noted this would go beyond the 30-day extension. Peter Malia asked Russ if he would agree to continue beyond his 30-day extension to April 14, Russ agreed. Peter Moore wants the board to define exactly what they expect DES to address and in what form. Do they need it in writing or just verbal? Members felt that it should be in writing. The applicants had not submitted anything to DES until today.

Tom Adams stated that from the outstanding concerns list DES will review all applicable documentation, Wetlands, Alteration of Terrain, Drinking water design, wastewater design and US EPA storm water pollution prevention permit.

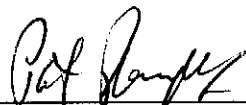
Peter Joseph did have a discussion with Mr. McCluskey about what was done in 2007. Peter told him additional testing had been done and the abutters had raised concerns. He asked if the additional testing would raise any other concerns he had in regards to the previous conditions. Would he have other recommendation from DES on what course of action The Town should take? He is looking for the location of the test pits; information will be sent to him. It was stated that the board would go by the DES recommendations. Input from DES is whether or not the previous conditions that were placed on this project would be satisfactory given the addition information that has come to light. He needs two things from us to complete that and Peter needs to have a conversation with him. Peter Moore is concerned about the time line, that the Board needs this information and would it have the time to complete before the Board's next meeting. Pat Romprey felt they should wait for the toxin report and things like that. The flood studies will be done in a normal course. Pat is more concerned about any hazardous materials and where they are located and if there are large amounts of them. To put everything into one motion was not a good thing to do. The board then discussed what main items they needed to make a decision. The board asked the applicant when they would be submitting their information for permits, applicant responded after they got their approval. The approval would be contingent that they have all permits. The costs for these permits are high to start before approval. Pat asked the applicant if the board approved would the applicant be OK with the above condition and they must provide positive proof of no negative impact on abutters or down stream would this be acceptable. Applicant, yes.

Peter Malia stated that if the motion was granted the board would want to have Peter Joseph provide Mr. McCluskey with locations of Eastern Analytical test pit, Haley & Aldrich report, and ask him to give you a written opinion on what recommendations he would have based on this information.

John Hettinger made a motion to get a written report back from DES, Mr. McCluskey, indicating that there are no problems with hazardous materials on this site and the way the information was collected regarding the hazardous material characterized the site properly: Seconded by Jim Spanos. Approved by all members.

Pat Romprey made a motion to close the meeting at 7:30pm: Seconded by Jim Spanos. Approved by all members.

Dated: April 14, 2010

  
Pat Romprey, Chairperson

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March 10, 2010

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**OUTLINE OF ISSUES PENDING – TO BE ADDRESSED  
BY  
BUNKER LANE RESIDENTS, FAIRWAYS AT LINCOLN CONDOMINIUM  
(Planning Board Meeting – March 10, 2010)**

1. TF Moran Report – Drainage Design & Storm Water Management
2. Haley & Aldrich – Environmental Conditions
  - A. Not submitted to DES – per McCluskey THIS DATE
  - B. Not enough test pits to properly characterize the site
  - C. Materials management plan should be a PRE-condition to approval
  - D. Storm water and flood impact risk
  - E. Alternation of Terrain yields unmitigated increase of flood risk – no plan in place for water redirection or storage in the event of flood
  - F. Displacement of terrain redirects water downstream elsewhere
  - G. Army Corp – Nov. 2007 Board conditions to previous project noted “unacceptable conditions” finding – See the Corp report Feb and Jan 2007
  - H. “Indemnification” condition
3. Walk-through – Feb. 16:
  - A. “Fairways Walk Through” which took place on Feb. 16.

- B. **Safety concerns.** Cannot be made safe, regardless of sidewalks and/or speed bumps.
- C. Access other than through Bunker Lane would remedy safety concerns.
- D. Board dismissive of the safety concerns (Feb. 24).
  - i. Town to start setting a precedent that “development would be stopped whenever there is a safety concern”.
  - ii. Safety issues of kids running in the streets and dogs and pedestrians could be solved if the abutters were more responsible (“don’t let children and pets play in the street”).
  - iii. Board inferred that concerns for safety were raised as a smoke screen to try and stop the construction and that if the Board granted the abutters requests to require a different access, then the abutters would complain about something else with respect to that access.
  - iv. Board member suggested TF Moran’s calculations with respect to number of trips per day were incredible – Referred to a Town study done previously whose numbers were much lower.
- 4. McCluskey (comments of Feb. 24 meeting):
  - A. On Feb. 24 – Peter Joseph then explained that he had a conversation with Mike McCluskey at DES. Apparently, McCluskey indicated to Joseph that the conditions were satisfactory to him at the time of the initial application in 2006
  - B. Statement is contrary to representations McCluskey made to Bob Duval and Haley & Aldrich and contrary to a letter authored by DES in 2006.
  - C. Mr. Joseph reported that McCluskey was curious whether something more than wood ash was on the property. DES should have its report completed by the Planning Board Meeting scheduled for March 10<sup>th</sup>. **NOT REPORTED**
  - D. Board recommended the Haley & Aldrich report be sent to DES. **MULLEN (TF MORAN) STATES McCluskey HAS NOT SEEN IT**
  - E. Board requested that DES comment on the Haley & Aldrich report on the questions raised therein in addition to the additional test pits and study by Eastern Analysis. **NOT DONE**



The Board indicated that because DES already granted a permit, they feel no need to further question DES.

5. Applicant "Updates" Feb. 24

A. Pump Station and permission to tie in

Project is predicated on the use of the privately owned sewer system and pump station.

**ALTERNATE ROUTE WOULD AVOID IT OUTRIGHT, AS THE NOV. APPROVAL NOTED**

**AGREEMENT WOULD LIKELY BE REACHED IF THE ROAD WAS CONSTRUCTED ELSEWHERE**

**IS THE PB GOING TO MAKE THIS A CONDITION?**

B. Road Damage

The Town indicated it would require a bond to be posted and the applicant agreed.

C. Flood Plain

Project to be built to the standard of the new Flood Plain

Fill to be used

Board suggested it may need the review of a civil engineer with respect to the fill and the proposed elevation. **IS THIS TO BE A CONDITION?**

D. Shore Land Exemption

Board indicated that while LaFrance continues to talk about a Shore Land Exemption, that the actual exemption has not been provided.

What was provided was an email from the State indicating that there is an exemption but the actual paper is not part of the application.

Actual paper/exemption is in the application prior to approval.

**NOTHING TO DATE**

E. Indemnification for the Town – Levee

Board raised the issue of an indemnification for the levee.

Was a condition placed in the original 2007 approval.

LaFrance: Not be inclined to recommend that the builder agree to indemnify the Town for a levy that FEMA indicates is a problem.

**THE 2007 CONDITIONS REQUIRED IT**

LaFrance dismissive of classification of the levee, suggesting a flood study previously for a down stream property and FEMA's reports not consistent.

**NO SUCH PREVIOUS REPORT PRODUCED**

He did not believe the levee would be breached and the Town should not be worried about a breach. He dismissed FEMA's classification.

**NO BASIS OR STUDY TO DISMISS THE CORP.'S FINDINGS**

F. Landscaping

LaFrance: Suggested he would look into that.

G. Recreation Trail

**NO – THERE IS NO RIGHT OF ACCESS THROUGH FAIRWAYS' PROPERTY**

6. ADDITIONAL COMMENTS

A. Board - Safety concerns "pure speculation" and that there were many other roads in the Town with houses closer to the road than the Fairways Condominiums and, therefore, much more dangerous.

B. Previous plans included proposed additional units to be built by the Fairways, thus, he questioned whether, in fact, there was a valid safety concerns as additional units were proposed throughout.

38 additional were thought out of which 14 of at cul-de-sac.

The units were built and as a result, the drive is under-designed.

**The original Fairways condo site plan had only another 38 units in 16 buildings – with 14 of the 38 off the cul-de-sac planned – limiting ingress/egress to the drive almost where Bunker Lane starts**

**Never developed**

- C. Bob Duval – **Drainage Issue** – TF Moran report

Flood plains, flood storage and fill are serious issues that need to be addressed.

LaFrance dismissed FEMA's findings without presenting any evidence which supports his belief that FEMA is wrong and that the levy is, in fact, not a problem.

- D. **Hazardous waste issue**

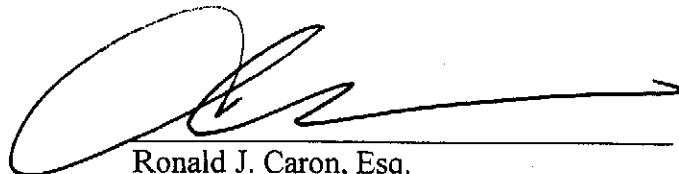
While some waste materials are exempted from DES regulation by law, should be addressed.

Haley & Aldridge recommends that the Town work with DES to require a mitigation plan even if the material is not DES regulated and not requiring a formal mitigation plan.

These materials need a management plan as much as some regulated materials.

- E. Pubic safety issue v. legal issue of ingress and egress over Bunker Lane – Board confused or mistaken

March 10, 2010



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*Time frame: Condition precedent documents and permits needed  
3/10/2010 Subsequent restriction on use of property*

**Outstanding concerns for LSMP d/b/a "The Rapids" Site Plan / Subdivision Review – 03/10/10**

-Satisfy paragraphs #4 and #9 from HEB 03/04/10 review to satisfaction of Josh McAllister

**Contaminations / HazMat on site -**

1. M. McCluskey (NHDES) needs to review all applicable documentation
2. LSMP should be required to follow all recommendations put forward by NHDES

**Water & Sewer -**

1. Plan will be approved as shown, making final approval contingent on access to private utilities.

**Road -**

1. Applicant needs to win court case to demonstrate ability to use Bunker Lane/private ROW for primary access as shown on plan.
2. Road needs to be bonded, with renewal proved each year
3. Road needs to be restored to current condition after completion of project, at a minimum

**Impact Fees -**

1. Applicant will pay their fair share toward water and sewer impact fees and bedroom taxes

**Permits -**

1. Applicant needs to gain NHDES Wetlands, Alteration of Terrain, Drinking water design review, wastewater design review, US EPA stormwater pollution prevention permit,

**Floodplain -**

1. Applicant needs to acknowledge current and proposed floodplains on AOTP application
2. Project needs sealed utilities where utilities fall within 100 year flood plain.
3. How will Alteration of Terrain Permit be handled due to floodplain changes?
4. Town should require detailed building plans to be filed (stamped by a qualified structural engineer) showing that buildings will be built to standards as described in the Land Use Plan Ordinance – Floodplain Development District, or an approved LOMAR from FEMA for all buildings to be built within the 100 year floodplain.

**Granite Block Levee/Riverbank -**

1. Was not designed to current 100 year flood standards
2. Town currently has no plans to increase the flood capacity of the levee or to make upgrades in order to provide any degree of flood protection relevant to the National Flood Insurance Program (NFIP)
3. Applicant needs to acknowledge that the levee does not and is not planned to provide flood protection from a 100 year flood event.

**Private Utilities -**

1. Applicant agrees road, water and sewer will remain privately owned in perpetuity

**Recreation Trail / Landscaping Plan**

1. Applicant with negotiate and reach agreement with the Board of Selectmen regarding a recreational trail/ pedestrian path connecting Cooper Memorial Drive and the other end of the trail at the Lodge at Lincoln Station property.