

**LINCOLN PLANNING BOARD**  
**REGULAR MEETING MINUTES**  
**WEDNESDAY, JANUARY 11, 2017 – 6:00PM**  
**LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

**APPROVED**

**Present:** Chairman Jim Spanos, Selectmen's Representative OJ Robinson, John Hettinger, Ron Beard (alternate & Fire Chief), Callum Grant (alternate)

**Members Excused:** Vice-Chairman R. Patrick Romprey, Paula Strickon, Norman Belanger (alternate)

**Members Absent:** None

**Staff Present:** Planning and Zoning Administrator Carole Bont, and Wendy Tanner (recorder)

**Staff Excused:** Town Manager and Town Planner Alfred "Butch" Burbank

**Guests:**

- **Paul J. Beaudin II** – resident and property owner of 2 Louis Lane, Lincoln, NH 03251 (Tax Map 117, Lot 069), PO Box 872, Lincoln, NH 03251-0872.
- **Clifton Dauphine** – resident and property owner of 7 Pleasant Street, Lincoln, NH 03251 (Tax Map 113, Lot 081)
- **Denis Desmarais** – resident and property owner of 11 Maple Street, Lincoln, NH 03251 (Tax Map 118, Lot 066)
- **Tammy Gionet Dutilly** – resident and property owner of 229 Pollard Road, Lincoln, NH 03251 (Tax Map 113, Lot 061)
- **Tamra Ham** – resident of 98 US RTE 3, Lincoln NH, 03251 (Tax Map 109, Lot 002) and Selectman for the Town of Lincoln.
- **Roger Harrington** – resident of 131 Pollard Road, PO Box 386, Lincoln, NH 03251 and owner with Sarah A. Harrington of 131 & 133 Pollard Road (Tax Map 117, Lot 003).
- **Paulette Lamontagne** - resident of Lincoln, and property owner at 99 Pollard Road, (Tax Map 117, Lot 020), PO Box 847, Lincoln, NH 03241.
- **Robert (Bob) Lamontagne** - resident of Florida, and property owner at 99 Pollard Road, (Tax Map 117, Lot 020), PO Box 847, Lincoln, NH 03241.
- **Susan Ledger** – resident and property owner of 25 Maple Street, Lincoln, NH 03251 (Tax Map 113, Lot 158)
- **Bruce Marshall** – attorney at D'Amante, Couser, Pellerin & Associates, Nine Triangle Park Drive, P.O. Box 2650, Concord, NH 03302-2650, representing:
  - **Carla J. Romprey Trustee**, 30 O'Brien Ave, Lincoln, NH 03251 and
  - **Thomas & Gail Tremblay**, 19 Louann Lane (Tax Map 117, Lots 017). Wife of Thomas Tremblay. Properties are owned by Thomas Tremblay, Trustee of the Thomas P. Tremblay Revocable Trust, PO Box 235, Lincoln, NH 03251-0235.
- **Jeffrey C. Martel** – resident, abutter and property owner of 113 Pollard Road, Lincoln, NH 03251 (Tax Map 117, Lot 021) owned by Jeffrey C. & Karin Martel, Trustees of the Martel Family Trust, PO Box 66, Lincoln, NH 03251-0066.
- **Karin Martel** – resident, abutter and property owner of 113 Pollard Road, Lincoln, NH 03251 (Tax Map 117, Lot 021) owned by Jeffrey C. & Karin Martel, Trustees of the Martel Family Trust, PO Box 66, Lincoln, NH 03251-0066.
- **Patricia McTeague** – resident and property owner of 51 School Street, Lincoln, NH 03251 (Tax Map 113, Lot 113), PO Box 2, Lincoln, NH 03251-0002.

- **Peter Moore** – resident and property owner of 120 Pollard Road, Lincoln, NH 03251 (Tax Map 117, Lot 037)
- **Myles Moran**, resident of 11 O'Brien Avenue, Lincoln, NH 03251 (Tax Map 117, Lot 024) whose address is PO Box 184, Lincoln, NH 03251-0184 and Principal/Broker for Moosilauke Realty, 104 Main Street, North Woodstock, NH 03262
- **Justin Roshak** - guest, 121 Toad Hill Road, Franconia, NH, student intern at the Littleton Courier newspaper.
- **Michael Schnell** – resident and property owner of 41 Pollard road, Lincoln, NH 03251 (Tax Map 117, Lot 108)
- **Gail Tremblay** – resident of 19 Louann Lane (Tax Map 117, Lots 017). Wife of Thomas Tremblay. Property is owned by Thomas Tremblay, Trustee of the Thomas P. Tremblay Revocable Trust, PO Box 235, Lincoln, NH 03251-0235.
- **Wayne A. Wright** – resident and property owner of 118 Pollard Road, Lincoln, NH 03251 (Tax Map 117, Lot 038), PO Box 691, Lincoln, NH 03251-0691.

- I. **CALL TO ORDER** by the Chairman of Planning Board (PB); announcement of excused absences, if any, and seating of alternates(s), if necessary.

*Ron Beard and Callum Grant were seated.*

- II. **CONSIDERATION** of meeting minutes from:

- December 28, 2016

**Motion to approve the minutes of December 28, 2016 as amended.**

**Motion: John Hettinger      Second: Ron Beard      All in favor: 4-0**

*Callum Grant abstained from the vote.*

- III. **CONTINUING AND OTHER BUSINESS** (Staff and Planning Board Member/Alternates).

- A. **6:00 PM. Sign Master Plan Update 2017**

**Motion to skip over the signing of the Master Plan until later in the meeting.**

**Motion: John Hettinger      Second: Ron Beard      All in favor: 4-0**

- IV. **NEW BUSINESS:**

- B. **6:00 PM Public Hearing Regarding Proposed Amendments to Town of Lincoln's Land Use Plan Ordinance (LUPO)**

1. **Public Hearing regarding proposed amendment to the Lincoln Land Use Plan Ordinance (LUPO) Amend Article VI, Section D. Floodplain Development District - Change "Building Inspector" to "Board of Selectmen or designee".**

**Motion to open public comment.**

**Motion: John Hettinger      Second: Ron Beard      All in favor: 4-0**

*There was no public comment.*

**Motion to close public comment.**

**Motion: John Hettinger      Second: Ron Beard      All in favor: 4-0**

**Motion to recommend the proposed amendment to the Lincoln Land Use Plan Ordinance (LUPO) Amend Article VI, Section D. Floodplain Development District - Change “Building Inspector” to “Board of Selectmen or designee”.**

**Motion: John Hettinger      Second: Ron Beard      All in favor: 4-0**

**2. Public Hearing Regarding Proposed Amendments to Town of Lincoln’s Land Use Plan Ordinance (LUPO)** Public Hearing regarding the following citizen’s petition received by the Town Clerk on December 1, 2016:

“...[P]etition the following Zoning Ordinance Amendment in accordance with RSA 675:4 Are you in favor of amending the zoning designation on the follow lots; Map 117 Lots 016,017, 018, 019 and 025 from General Use (GU) to Rural Residential (RR)?

Map 117 Lot 016	Thomas P. Tremblay, Trustee Thomas P. Tremblay Revocable Trust 2006
Map 117 Lot 017	Thomas P. Tremblay, Trustee Thomas P. Tremblay Revocable Trust 2006
Map 117 Lot 018	Thomas P. Tremblay, Trustee Thomas P. Tremblay Revocable Trust 2006
Map 117 Lot 019	Carla J. Romprey, Trustee 1998 Carla J. Romprey Revocable Trust
Map 117 Lot 025	Carla J. Romprey, Trustee 1998 Carla J. Romprey Revocable Trust”

Proposed amendment on file for public inspection at Town Office, open Monday – Friday 8 AM – 4:30 PM.

**Motion to open public comment.**

**Motion: John Hettinger      Second: Ron Beard      All in favor: 4-0**

Chair Spanos read a letter from Thomas and Gail Tremblay. (see attached)

**PUBLIC HEARING**

**Presentation on Behalf of Petitioners:**

**Myles Moran:**

- Myles Moran hung up an enlarged tax map for the residents and the Planning Board to see the area of Lincoln that was being discussed. Moran said that sometimes when we look at land we have to look at its “highest and best use” as allowed under zoning; sometimes we have to research grantors’ deeds to determine whether any private restrictions were placed on those uses in the deeds. Moran said Sherman Adams purchased several large tracts of land from the paper mill company many years ago. The five lots (and others) that are the subject of the petition were originally part of one or more large lots that were part of this purchase by Adams.
- In 1970 this piece of land was “deeded out” and in that deed the grantor put in the following restrictions:

“By the acceptance hereof, the Grantee, for itself its successors and assigns, covenants and agrees to and with the Grantors, their heirs and assigns as follows:

The above described premises shall be used and occupied for **residential purposes only** but may be subdivided into building lots containing not less than ten thousand (10,000) square feet each, and in any event not to be subdivided into more than six (6) lots.”

- These five (5) lots subject to the petition were described as “Lot 1” through “Lot 5” of the “Rutherford Subdivision”. These five (5) lots were conveyed by Sherman Adams to Mr. Rutherford after the lots were subdivided somewhere in the 1970’s. The configuration of these five lots has remained, for the most part, with the exception of a small lot line adjustment between the two Romprey lots (Map 117, Lot 25 and Map 117, Lot 19). Moran pointed out on the map, the house built by Mr. Rutherford, which lots were vacant and which lots had homes built on them. Moran pointed out the Romprey’s two properties and his property which abuts one Romprey property.
- In Moran’s opinion Sherman Adams’ meaning and intention as indicated in the language of the deed restrictions was very clear. Moran pointed out the location of Mr. Adams’ home in relation to the other homes and vacant lots. Moran said that before the property was subdivided and sold, Sherman Adams could look across the land to his field house. The area between Sherman Adams’ house and Adams’ field house was “pretty much all mowed hay back then”. Moran said that when Sherman Adams decided to subdivide and sell these lots Adams wanted to make sure that the lots were going to remain “residential” properties in Lincoln because these five (5) lots were some of the nicer, larger lots in Lincoln.
- How was the zoning district designation of these five (5) lots changed from Rural Residential (RR) District to General Use (GU) District. Moran has owned his property since 2006. He was never notified about any proposed changes in the zoning district designation for these five (5) lots. Most of the people who built there understood that this area was all going to remain residential housing in the Rural Residential (RR) District.
- The Planning Board members should direct their attention to the fact that in the Village Center (VC) District, the widest point from Main Street to the edge of the Village Center (VC) District is about two hundred seventy-five feet (275’). “In the old days” people talked about the first two lots on Main Street as being “commercial”. However, if they look carefully at the properties as they travel southwest from Town Hall along Main Street past the school property on Linwood Drive and Connector Road and then down past Franklin Street, LaBrecque Street, West Street and Railroad Street, they will find that only the first properties on Main Street are consistently “commercial”. Even to this day the bulk of those second properties in that Village Center (VC) District are residential homes. Most of the second lots back from Main Street are not “commercial” properties.
- The Planning Board members should travel northeast starting where the Lahout’s Plaza was put in. Moran said that while he was living in Lincoln there were four (4) or five (5) homes on Maple Street that were demolished to make way to build what is now known as Lahout’s Plaza. The Town pushed the Village Center (VC) District further back from Main Street to accommodate Lahout’s Plaza. At that time, traveling northeast from Lahout’s Plaza, there was nothing else “commercial” on the north side of Main Street or on NH Route 112 – the road heading toward Loon Mountain. All of the properties had residential homes with the

exception of The American Legion and Tom Tremblay's property which has always been mixed use property – a residence and a business.

- Could the Planning Board members explain why they wanted to change the size of the zoning district, going from two hundred fifty feet (250') in one place and then adding another three hundred feet (300') onto it? Was the Planning Board trying to change the zoning district designation for these lots to allow for a kind of higher density?
- With a Rural Residential (RR) District designation, the property owners can still develop those lots as single family lots with a minimum lot size of fifteen thousand (15,000) square feet. There are plenty of development opportunities for those lots; however, one of the problems with those lots is that their access is limited and serviced by deeded rights-of-way into the lots. For example, access to Romprey's lot (Map 117, Lot 025) is limited to a ten foot (10') right of way across Moran's land known as "O'Brien Avenue Right of Way". Access over the right of way is restricted only to "Lot 5" (Map 117, Lot 025). "O'Brien Avenue Right of Way" does not go through to the Romprey's second property known as "Lot 9" (Map 117, Lot 019). The access for "Lot 9" is through "Louann Lane" and "Louann Lane Right of Way". "O'Brien Avenue Right of Way" is not supposed to extend through and into "Louann Lane Right of Way". Moran said you can physically drive a car through from "Lot 5" (Map 117, Lot 025) to "Lot 9" (Map 117, Lot 019), but "you have to drive through dirt".
- The Sherman Adams deed restriction applies to "Lot 5" (Map 117, Lot 025). "Lot 5" (Map 117, Lot 025) is serviced or accessed only via the right of way known as "O'Brien Avenue Right of Way". "Lot 9" (Map 117, Lot 019) is serviced or accessed only via the right of way known as "Louann Lane Right of Way". "Louann Lane Right of Way" is over one of the Tremblay properties (Map 117, Lot 017). "Lot 5" (Map 117, Lot 025) does not have good access.
- "Lot 5" (Map 117, Lot 025) was always meant to be "residential" land, not "commercial" land. "Lot 5" is residential land today and it has not changed since Sherman Adams bought this property in 1960. "It is 57 years later and it is what it is." Moran sees no need to have any change to the zoning district designation for those lots. The petitioners have signed and submitted a petition to the Town to have the zoning district designation revert it back to Rural Residential (RR) District.
- Moran does not know how the change in the zoning district designation from Rural Residential (RR) District to General Use (GU) District happened. He is trying to find out. He is trying to get all of the notes he can about the change, but the change certainly was not transparent enough for the abutters to know about it.

**Peter Moore:**

- Moore is concerned about a business development encroaching on those lots and using Louann Lane as means of egress.
- Moore has the same concerns about Pollard Road. Moore has lived on Pollard Road for forty (40) years. Over the last ten (10) years there has been substantially more traffic on those roads. Second homeowners have discovered Pollard Road as an escape route from Main Street traffic when it is busy. Traffic is one issue that the Town does not really have any control over.

Chair Spanos said that access would be taken into consideration if someone came in with a proposal for Site Plan Review. Moore said he accepts that as part of the development in a business economy.

- There is quite an elevation difference between the petitioned properties and to where the land drops down to the Lahout's strip mall. Moore could not understand how those lots could be developed back as far as Louann Lane with that kind of elevation difference.
- Presuming the elevation differences could be overcome, Moore as a resident of Pollard Road would not want to see the Planning Board approve that traffic pattern using Pollard Road to access that increased business district.
- The properties subject to the petition are clearly defined or should be clearly defined as being a part of a "residential" area. Moore believes that these five (5) lots should be excerpted from any Planning Board's recommendation to change the zoning district designation from Rural Residential (RR) District to Village Center (VC) District which is only slightly more restrictive than General Use (GU) District.

**Presentation on Behalf of Those Who Object to Petition:**

**Gail Tremblay:**

- Tremblay's own three (3) of the lots that are subject to the petition. Tremblay said that they were fortunate enough to be able to purchase the three (3) lots: (Map 117, Lot 018), (Map 117, Lot 017) and (Map 117, Lot 016). Tremblay loves having that vacant space. The Tremblay's feel fortunate they were able to purchase that home and now they can rent it out. The Tremblay's had a dream of someday their children might come home and want to build a home or put in a business there. If they were a hair dresser they might want to set up a shop on one of those lots.
- Tremblay's had dreams about what they would do with the land they purchased. Her neighbors say, "Who will this affect if we were going to do something with our land?" Tremblay said the reason she came to the hearing was not because her neighbors thought she was planning to do something with her land because she is not. She came to the public hearing to fight against what might be built there. She and her husband felt like they had a little protection from development because their neighbors had only a right-of-way over the Tremblay land so the neighbors could not. They had a dream once that maybe they could put the real estate office in the back house because they would never be able to sell the front house unless they "sold it to some big industry or something". They also figured out that putting in a real estate office would require some room for cars. They thought about how customers would get there and how many cars would come. They had a dream that maybe they would build a barn to have family events in with street lights and room for parking cars. They thought about what would that mean. How many cars would have to come through? Do you want those cars to come through there? Don't take away their dreams because they can have dreams, but their dreams may never come to fruition.
- "I have two other referrals. That hasn't changed, I don't even know why. Sometimes they called up from the office here and said 'We are changing it' and my husband said, "Well, okay". We don't know why it was changed from one [zoning district designation] to the other."

Chair Spanos said that the Planning Board does not change the zoning ordinance.

**Presentation by Attorney Bruce Marshall on behalf of Rompreys & Tremblays:**

Attorney Bruce Marshall, from Concord of the D'Amante, Couser, Pellerin & Associates, Nine Triangle Park Drive, P.O. Box 2650, Concord, NH 03302-2650 law firm representing both the Tremblays and the Rompreys with respect to the petition.

Attorney Marshall said:

- The petition is written in the form of a question. The Petition is improper on its face. On its face, the petition is improper and illegal. You cannot put a question into the ordinance. The petition is not properly crafted with respect to if the Town is going to try to make a change.

Chair Spanos said that is a question about the proposed warrant article, not a question about the zoning ordinance.

- It is important for the Planning Board members to know that close to one (1) year ago the Morans contacted the Rompreys, trying to buy the Romprey property for their own plans and developments in the future. When the price could not get low enough Myles Moran, specifically, went around telling lots of stories to the neighbors, as we understand. We are still investigating what we feel are false claims that were made in order to get people to sign a petition. "So we can get those...we're in that process." It was only after Moran could not purchase the property from the Romprey's at a cheap enough price, that Moran took the approach of getting the zoning district designation for the lots changed from General Use (GU) to Rural Residential (RR). The Town knows that changing the zoning district designation for these lots would lower the tax base because "there is less use available".
- It is also Attorney Marshall's clients' position that it would be illegal for the Planning Board to offer any support for this petition given that the content of the petition "flies in the face" of the Town's own Master Plan. The Planning Board as well as the Zoning Board and the Selectmen, because this town voted back in 2003 when the Board adopted the Master Plan which now is still in effect. Attorney Marshall has checked and there is no significant change in respect to these issues. It is this Planning Board's responsibility to adhere to that Master Plan and the intent of that Master Plan. The purpose of that Master Plan is the Village Center. Nowhere in that Master Plan does it talk about what Mr. Adams or Rutherford may have done for the Town. It was the Master Plan for the people, plus the whole town, not just this neighborhood that decides what is best for the Town.
- Attorney Marshall said the deed restriction that Moran mentioned is what Marshall can only describe as "an intent to kind of covenant". Deeds do not control the use; towns control the use. If Moran was reading a covenant, the covenant was not handled very properly. Attorney Marshall just heard about the covenant for the first time tonight when Moran was reading from some deed prior to 1970.
- The Town Master Plan and the existing Town zoning ordinance are what governs here. Lincoln's Master Plan (he has the old one all highlighted as well as the new one), talks about how the Village Center is the center of Town. The last Master Plan says that something like seventy-two percent (72%) of the vacant land left in Town is undevelopable because of the terrain (i.e., steep slopes). The area of the General Use (GU) District is very small. The Village Center (VC) District has Main Street (NH Route 112) going through it. The Master

Plan talks about how NH Route 112/Main Street is controlled by the State of NH because it is a State road. The State, because of the high traffic counts, (mostly feeding the Loon Mountain ski area), “is causing the need to eliminate all on street parking on Main Street due to the State concerns about congested traffic flows.

- In order to maintain the Village Center the Town is going to need some off street parking. The Town is going to need properties such as these five (5) lots sometime in the future, for off street parking. The Town already put these five (5) lots into the General Use (GU) District. The Town foresaw the expanded use off from Main Street in the Village Center. “It all ties into everything that the Master Plan talks about.” The reason towns have a Master Plan is based on State statutes; so the whole Town can have a development plan based on what is deemed best for the Town. For instance, so individuals in the Town cannot go making spot zoning in order to try and take care of their own personal plan for their own back yard.
- The Town has property owners who have been paying taxes based on the land’s designation as General Use (GU) property for a lot of years. Plan on keeping the zoning district designation just where it is. Then you have Moran who, because he could not purchase a chunk of the land, now wants to change the zoning district designation of the land to the Rural Residential (RR) District to drive that price down. That is not what the Master Plan talks about. That is not how this Planning Board is supposed to be acting in respect to these proposals.
- If the Planning Board “can fether through the poorly worded petition that the petitioners presented”, the petitioners are proposing a zoning district designation change. If the Town is going to attempt to try and change the zoning district designation of these five (5) lots from General Use (GU) District to Rural Residential (RR) District, the Town is going to lower the tax base; the Town will further hinder what was going to be required in the future as perceived by the Master Plan in order to keep your Village Center viable if you no longer have on street parking along Main Street.
- There are five (5) lots that could be potentially impacted, two of the Romprey’s and three of the Tremblay’s. If the Planning Board were trying to downzone these five (5) lots into Rural Residential, it is poor planning. The Town has some significant open space patches that are adjacent to the Village Center and to commercial lots on Main Street that are already overcrowded. The Town’s “overall public goal”, according to its Master Plan, your zoning ordinance and even its Subdivision Regulations is “to promote the highest and best use”. The Town’s Master Plan says that the “highest and best use” of land down in this area is as Village Center (VC). Adding more Rural Residential (RR) land to that district does not help the Village Center (VC). Keeping the five (5) lots as General Use (GU) adds to what was intended and does promote the long life and vitality of the Village Center (VC).
- The petitioners’ proposal as set forth in Moran’s presentation does not take into consideration the impacts on Main Street that are coming at the hands of the State. In Attorney Marshall’s opinion, based on what he has heard, Mr. Moran is “trying to interfere with the neighbors” by saying that if they do not change the zoning district designation for these five (5) lots from General Use (GU) to Rural Residential (RR), there is going to be some subsidized housing, which is not the case. You don’t have the affidavits yet. All the concerns that Mr. Moran has talked about so far tonight are addressed in the Planning Board process.



- For development on any of these lots, a potential developer would have to come before the Planning Board and address access and other concerns. So there is a procedural safeguard in place to address the concerns the neighbors have and that procedural safeguard is the Planning Board. So keeping the zoning district designation as General Use (GU) provides no real threat of subsidized housing. Subsidized housing was never proposed for the property and there has never been that possibility with respect to his clients.
- Attorney Marshall's clients object to Moran's going out and telling people stories like that to get them to sign a petition rather than the truth of the matter. It is just inflammatory. Moran is trying to drive the value of these properties down when the Town has a Planning Board that can ensure all the concerns that have been raised so far tonight about any potential development in the area will be addressed.
- Attorney Marshall's clients request that the Planning Board not support this proposal that has been put forth by Mr. Moran and instead adhere to the Master Plan that members of the Planning Board are all going to sign tonight.

Bont asked him to speak up. Marshall said he was all done.

**Comments by Peter Moore:**

- Moore read the draft Master Plan and does not want to argue issues of parking for the future. The proposal is quite extensive along Main Street; there is a lot of property being proposed to be re-designated. Members of the Planning Board should walk the property the Board is suggesting be re-designated; the topography for those five (5) lots included in the petition are very different than any other lots proposed for re-designation. Moore thinks the Planning Board needs to consider that difference when the Board actually reviews the proposed map for the Master Plan.
- Moore thinks that the "highest and best use" for the five (5) lots is as Rural Residential (RR) or as General Residential (GR) at the most. Moore asked the Board to look at the property along Louann Lane and its position in relation to the drop off on Main Street and the residential nature of the lots' surroundings. "It does not seem sensible to take that particular property and include it in the broad generalization that the proposal should have changed to what the zoning represents."

Chair Spanos said that the discussion should be centered on the petition.

Moore said that it would appear that no one has been aware of the General Use (GU) zoning designation for those lots for a long time because nothing has ever been developed there. It seems that it would be more appropriate to restrict the development of those five (5) lots to residential use.

**Paul Beaudin:**

- When the Master Plan was being critiqued by all the people in the village, a lot of them came before the Planning Board and said they had concerns about the potential commercial development of parcels being too close to Main Street. In response, the Planning Board told everyone that the Master Plan is not a mandate. It is not an enforceable zoning ordinance. The Master Plan is only a working tool to be used to guide you. That has always been the case. The same with the Capital Improvement Plan (CIP).

- In that Master Plan, however, there is a lot of detail. There are suggestions about how to maintain the village's "small town feel" and how to keep the "flavor" of some of the mill houses and how to prevent some of the smaller pieces of property from losing their identity. That was a big part of the Master Plan.
- What the Planning Board is doing here is contrary to that idea of maintaining the "small town feel" if the Board allows this to go through at a higher use. There are a lot of people who live here who like the "small town feel". There are a number of other properties on Main Street that have yet to be built on. Beaudin can see changing some things, but he cannot see changing the zoning district designation for properties until the Town really has to because all the other properties on Main Street are "maxed out".
- Beaudin does not know where Attorney Bruce Marshall gets his information about property along Main Street/NH Route 112 being "maxed out" because there is still a lot of property up and down Main Street that is currently undeveloped. To move the boundary of the Village Center (VC) District back to try to make that area a "higher use" area just does not really make sense.
- What the Master Plan really says is "to keep this a friendly small community" which was the original intent of the Town through its Master Plan. The Town is losing that sense of itself. Once the Town loses that "friendly small town feel" the Town will never get it back. Once you make the Village Center (VC) District bigger you are never going to make it smaller again. Once all the properties are used to their maximum potential along Main Street, he could then see the Board using the Master Plan to try and upgrade some of the secondary properties, however, until that happens, the Board should vote to recommend this petition.

**Attorney Marshall's Rebuttal:**

- Attorney Marshall said that he heard a couple of comments about the Planning Board changing the property to an increased use that he wished to rebut:
  - The five (5) lots are already in the General Use (GU) District. The petitioners are trying to change the zoning district designation to a decreased use – to allow only single family housing and duplexes according to what's allowed in the Rural Residential (RR) District. Such a change would mean the owners could not put in a condominium building or something else the way your Land Use Plan Ordinance (LUPO) is now worded as applied to lots in the Rural Residential (RR) District.
  - The property owners are not asking to increase any usage on it or "to increase the zoning". The petition is trying to "decrease it" from what it has been, General Use (GU) District. That would go against the Master Plan.
  - He did not say that the properties on Main Street were "maxed out". He said that there are problems on Main Street because the State wants to take away the Town's on street parking because of the high traffic volume.
  - According to the Town's own Master Plan for 2003, currently seventy-two percent (72%) of rural property is already developed. The majority of the undeveloped land cannot be used for development because of the steep slope terrain.
  - When you start from Main Street and work back, within the State's Ten (10) Year Plan the Town is looking at losing its parking along Main Street. Attorney Marshall

has not looked at how many lots are used and not used. There are a lot of small shops on that one side. He does not know where people are going to park unless the Town has some zoning districts that allows parking in the back. In the General Use (GU) District they could do such a thing.

- The properties included in the petition are in the General Use (GU) District. The petitioners are the ones who are trying to “down-zone it to bring those property values down”.

**Motion to close the public discussion.**

**Motion: John Hettinger**

**Second: Ron Beard**

**All in favor: 5-0**

**PUBLIC HEARING ENDED**

**Planning Board Discussion:**

Hettinger said that all the Planning Board can do is decide whether the Board should or should not endorse the petition; the Planning Board does not change anything.

Chair Spanos said that the petition, as written, is going on the warrant no matter what.

Callum Grant said that the property owners of these five (5) lots in question are not requesting this change in the zoning district designation. This would be done against their will. Unless the petitioners can show that there has been an illegal or inappropriate rezoning with abnormal procedure, it is hard to support the petition if you are going against the owners of the property. You would feel similarly if someone was trying to enforce a rezoning on your property against your wishes.

**OJ Robinson said:**

- In Thomas Tremblay’s letter and reiterated a few times, it was the Planning Board’s decision to classify these lots as General Use (GU). In the 2003 Master Plan this was already zoned General Use (GU) District. The 2003 Master Plan did not change that or propose to change it. I don’t know when the zoning district designation for these lots got changed to General Use (GU), but that would have been done through a vote at Town Meeting. The Planning Board cannot do that, nor can we do this.
- The Planning Board can only vote to recommend or not recommend the petition. However, the voters at the Town Meeting vote on any proposed zoning changes. The Planning Board did not make these five (5) lots General Use (GU) lots. The lots were in General Use (GU) in the Master Plan. This is an unchanged concept or unchanged from the 2003 Master Plan updated in 2016. He believes this is an unchanged set of lots that in the 2003 Master Plan were looked at as lots in the General Use (GU) District and the Planning Board did not change that designation. The Planning Board did make some proposed changes in the 2016 Master Plan.
- The Planning Board received a lot of feedback, especially about the lots at that end of Town where the Board proposed expanding the Village Center (VC) District. The Planning Board actually made some changes to our original thoughts to incorporate what many townspeople expressed to the Board about how they felt about preserving the “small town feel”. These lots were not supposed to be changed. They were not discussed as being a problem when the Board went through that whole process.

- Robinson said that he was not sure when and if the zoning district designations got changed. Robinson turned to Bont and said, “If you have data that says it was changed at such and such town meeting, I hope that you would bring that up tonight.”

### **Members of the Board and Planning and Zoning Administrator Bont**

Bont said “It is complicated.” The Planning staff has been researching this matter for several days now because of the two (2) NH RSA 91-A Requests for Information under the Right to Know Law. One request is from Myles Moran. The other request is from Attorney Bruce Marshall from the D’Amante Law Firm on behalf of his clients. They found a number of strange things. They have asked for advice from Town counsel about it. They have not finished their research. She said she was not sure what to offer here.

Chair Spanos said “We cannot really communicate that tonight.”

Bont said that they are not to the point in their research where they can really say, “This is what happened.” At this time they only have little bits and pieces of the puzzle. From what they have found so far it looks like there were some unusual things that happened.

Robinson asked if it was correct that in the 2003 Master Plan these properties were listed as being in the General Use (GU) District. Bont said, “No, [they] was listed as Rural Residential (RR)”.

Robinson asked if in the 2003 Master Plan were the properties projected or envisioned to be in the General Use (GU) District. Bont said that they did not appear to be.

Robinson said that when the Planning Board looked at those maps and spent hours looking at many different maps determining what was going to be changed and what was going to stay the same, were these lots designated as staying the same. Bont said, yes, they were. Although on the most recent tax maps the lots were in the General Use (GU) District, the zoning district designation for those five (5) lots was changed sometime between 2003 and 2013.

Paul Beaudin said that if the zoning district designation was changed between 2003 and 2013, there had to be a vote by the Town. If the zoning district designation for these properties was never voted on by the Town, it should not have been changed. Beaudin thought that it would be simple to go back and look at the Town Meeting Warrants to see if there had been a vote at Town Meeting to change the zoning district designation of these lots.

Bont said that it is a little more complicated than that. Bont said that they do not want to give inaccurate information and they have two RSA 91-A requests for this information.

Paul Beaudin asked if there was ever a vote taken at a Town Meeting to change this property from Rural Residential (RR) to General Use (GU). Bont said that she did not know the answer to that yet.

Robinson asked if there were other parcels in Town where the zoning district designation had changed between one period of time and another period of time without finding an exact vote at Town Meeting. After thinking for a moment, Robinson answered his own question with “Yes”. Robinson said that he believes the Town fixed the zoning district designations for the Conn and Govoni properties recently, however, the Town fixed those by a vote at a Town Meeting. Robinson continued, however, for Peter Spanos, Indian Head, and Campers World land, the zoning district designations for those properties was changed and when they did some research they did not find an exact Town Meeting vote for when that happened.

Paul Beaudin said that you cannot change a zoning district designation without a Town Meeting vote. If you do that then you are in violation of the law.

Robinson asked “Who is ‘you’?”. Robinson questioned, “I can’t do it?!”

Paul Beaudin said that the Town can’t do it. It has to go through a vote at Town Meeting.

Robinson said that he knows the process and that Beaudin was absolutely right. The Town cannot do that without going to Town Meeting.

Paul Beaudin said that if there is no vote taken at a Town Meeting then there is no way that these properties zoning district designations could have changed. Beaudin said unless you could find property cards that go back that far. The zoning district for the lots might have been listed on the property assessment cards. Could the zoning district have been recorded on deeds registered by the Registry of Deeds? If the change was not made pursuant to a vote by the Town Meeting, it just can’t be.

Robinson said that in the past there have been parcels in this Town whose zoning district designations have been changed on zoning maps. It is unknown when the changes were made, unknown why the change was made and there has not been a definitive finding of a Town meeting vote to make the change.

Paul Beaudin said that in order to correct the other zoning designation mistake the Planning Board went back to the voters at Town Meeting and said, we would like to change this zone.

Robinson said in the past we took a vote because of the befuddlement. We just took a new vote. We said, it has been zoned this way for decades. We just voted on keeping it the same. Both of those past situations. That is not going to happen here.

Karin Martel asked Robinson what he meant when he said, “That is not going to happen here.”

Robinson said that means that we are not going to Town Meeting to say, these lots used to be Rural Residential (RR) and they got changed to General Use (GU) at some point. Can we vote on just retaining it General Use (GU) and have everybody agree. That is what happened on the last two. Obviously, there will be controversy if we do that so it is not going to be done. We are going to vote on changing it or not changing it. We are going to find out through legal channels what the Town needs to do. What is the right thing to do? What is intended?

Jeff Martel said that there seems to be a need for an investigation or at least the need to complete the investigation before we know the answer.

Peter Moore said that if, in fact, there is an indication that at one time the five (5) lots were in the Rural Residential (RR) District and there is no warrant article showing that the Town Meeting voted to change that, then it could certainly be that the zoning district boundaries were misdrawn at some point and that, in fact, the lots are still in the Rural Residential (RR) District.

### **Second Public Hearing:**

Tamra Ham asked what the statutory deadline was for the public hearing.

Chair Spanos said that this is the first hearing and the Planning Board could have another public hearing if need be.

Tamra Ham said that the Board does not have to make a decision on this tonight, it could be put off to another meeting.

Chair Spanos said that this has taken on a life of its own, the Planning Board is only having a first hearing on the petition. Whenever the lots were changed, that is a separate issue.

Tamra Ham said that in order to make an informed decision about whether or not the Board should support this petition, should the Board wait until the Planning Board has the necessary information and give Bont more time to do proper research.

There was some discussion about when to hold the second public hearing or whether to recess and reconvene the current public hearing. Bont said that the Planning Board has to have the final public hearing by February 1<sup>st</sup> with the appropriate posting and publication.

**Myles Moran Final Argument:**

Moran said he respectfully requested that the Planning Board adjourn and continue this meeting to February 1<sup>st</sup>. Moran said he does not believe that the Board can make a decision as to whether to support this petition or not because more information is needed.

Moran said, “There is no doubt in my mind and other people here, that those originally were residential properties. How did they change? I’m talking about the Romprey lots. I know exactly how the Tremblay lots got changed. It was simple, Tom Tremblay just said, ‘Mine should match his’ and they said, ‘Yeah, you are right.’ What I want to know and that is part of the 91A is, how did the Romprey lots go from Rural Residential (RR) back in the 1970’s to General Use (GU)?”

Chair Spanos said that there was no zoning back in the 1970’s.

Moran said that is why the lots were designated Rural Residential (RR), he thinks. Moran requested the Planning Board continue the meeting and that there be no recommendation by the Board tonight until we can get further information about this matter. If it is truly found that there was no Town Meeting vote to change the zoning district designation of these five (5) lots, the petition can be withdrawn because the properties were never converted to General Use (GU). I think we need further information before the Planning Board can make any decisions.

**Attorney Bruce Marshall’s Final Argument:**

Attorney Marshall said that the Planning Board has a petition before them. The Planning Board is holding a public hearing tonight. This is the second hearing. If the Planning Board deliberates, as the Chairman stated earlier, this issue about how or when the zoning was changed to General Use (GU) is a separate issue. The Planning Board has a petition before it that the Board has received more than enough information to decide whether or not they want to support it.

**Paul Beaudin’s Final Questions:**

Paul Beaudin asked how far back Bont went looking in the warrants to see if the properties had been changed by vote at Town Meeting. Bont said 1986 was when the Land Use Plan Ordinance (zoning ordinance) was first adopted. Paul Beaudin said that if she started looking at the Town Meeting Minutes starting in 1986 and could not find any voting changes in that property. Bont said that they have not finished completing their research; that is the problem. Paul Beaudin asked if all the warrants from 1986 had been reviewed. Bont said she had not yet finished reviewing all of the warrants yet.

**Motion to close the public discussion.****Motion: John Hettinger Second: Callum Grant All in favor: 5-0**

Chair Spanos asked if the Board felt there was enough information to make a decision tonight.

Several members of the Board said they did not think there was enough information to make an informed decision.

Chair Spanos said that it is a moot point how the zoning district designations for those lots were changed, but the Planning Board could make a decision or a recommendation.

Robinson agreed with other Board members saying that he would like to learn the history behind the change before taking a vote.

**Motion to continue this hearing to February 1, 2017 at 6:00 PM.****Motion: Ron Beard**

Bont asked if she could publish and post a second public hearing instead of recessing and reconvening this public hearing to a date certain, like January 25<sup>th</sup>. She thought it might be preferable to have a second publicly noticed public hearing. After much discussion the Planning Board agreed to let Bont post and publish notice for a reconvened public hearing to be held on Wednesday, February 1<sup>st</sup> at 6:00 PM. Robinson agreed and said that as many people should be informed about this as is possible.

**Second: John Hettinger All in favor: 4-0****The public hearing will reconvened at 6:00 PM on February 1, 2017.****MASTER PLAN**

The Board members briefly discussed and signed the 2016 Master Plan for the Town of Lincoln.


- V. **PUBLIC PARTICIPATION AND OTHER BUSINESS:** Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

**VI. ADJOURNMENT****Motion to adjourn at 7:07 PM.****Motion: OJ Robinson Second: John Hettinger All in favor: 5-0**

Respectfully submitted,

Wendy Tanner,  
Planning and Zoning Recorder

Date Approved: 02/01/2017

  
James Spanos, Chairman