

APPROVED

PLANNING BOARD MEETING

Wednesday, July 14, 2021 – 6:00 PM

Planning Board Public Meeting

Lincoln Town Hall, 148 Main Street, Lincoln NH

This meeting will be a hybrid meeting – available to attend in person and available via the Zoom Meeting Platform to allow for town wide participation. The public is encouraged to participate remotely using ZOOM by going to:

Join Zoom Meeting

<https://us02web.zoom.us/j/85698723699?pwd=Y1haSUdxaXZyTEJHaUoyKzY3Nnovdz09>

Meeting ID: 856 9872 3699

Passcode: 549521 Or dial by your location 1-929-205-6099 US (New York)

(See also town website www.lincolnnh.org for the same link, meeting ID and passcode.)

I. CALL TO ORDER by the Chairman of Planning Board Jim Spanos;

Present: Chair Jim Spanos, Vice Chair Joe Chenard, Selectmen's Representative O.J. Robinson, Member Stephen Noseworthy, Member Paul Beaudin, and via (Zoom) Alternate Mark Ehrman

Staff Present: Planner Carole Bont, Fire Chief/Code Enforcement Officer/Health Officer/Zoom Host and Moderator Ronald Beard, Planning Board Recorder Judy Sherriff

Town Consultants Present: Attorney Peter Malia, Town Engineer Ray Korber (attending remotely via Zoom)

Guests: (via ZOOM)

- **Kathryn J. (Jeanne) Beaudin.** Resident and co-owner with Paul Beaudin II, PO Box 872, Lincoln, NH 03251-0872 of 2 Louis Lane, (Map 117, Lot 069).
- **Jason (Jay) W. Scambio,** resident and co-owner with Katie W. Scambio of 20 Pollard Pines Drive, Lincoln, NH 03251 (Map 117, Lot 048), President and General Manager Loon Mountain Recreation Corporation, General Manager for Boyne Resorts, General Manager for CLP Loon Mountain, LLC that is owner of 60 Loon Mountain Road (Map 126, Lot 020) a/k/a Loon Mountain Resort.
- **Unknown.**

II. CONSIDERATION of meeting minutes from:

- **June 23, 2021**

MOTION TO SKIP MINUTES FROM June 23, 2021

Chairman Spanos

All in favor.

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

A. SPR 2021 M124 L040 Loon Mountain Recreation Corporation – Discussion re: Loon Bridge Parking Area.

On August 28, 2011, Tropical Storm Irene dumped 10 inches of rain over Lincoln, causing the East Branch of the Pemigewasset River to flood and undermine the bridge abutments of the “International Bridge” to the Loon Mountain Ski Area, rendering Route 112/The Kancamagus Highway impassable east of the Resort. NH DOT closed the bridge on August 28, 2011 and then a portion of the bridge collapsed on August 31, 2011.

CLP Loon Mountain, LLC d/b/a Loon Mountain Recreation Corporation was the owner of Loon Mountain Ski area at that time. At issue was the “International Bridge” on Loon Mountain Road from the Kancamagus Highway across the East Branch Pemigewasset River to the Loon Mountain Ski Area. NH DOT replaced the washed-out portion of the bridge with a temporary bridge structure and then a permanent replacement was designed with funds provided by FEMA, the State of New Hampshire and the Town of Lincoln.

The replacement bridge could not be constructed in the same location as the old bridge. In order to build in the new location, the Town of Lincoln and CLP Loon Mountain, LLC swapped parcels of land so the bridge could be constructed in the new location. The land swap was submitted to the Planning Board at a Planning Board meeting on March 28, 2014 and approved by the Planning Board.

Review of documentation provided by Loon Mountain Recreation Corporation about former parking areas near the bridge that were relocated to the swapped lands.

Presentation: Selectmen’s Representative O.J. Robinson

The land swap agreement (approximately twenty pages) was signed by the Board of Selectman and has a two-step process that was agreed to by the Town of Lincoln and then CLP Loon Mountain, LLC.

1st Step: A quitclaim deed for a lot from CLP Loon Mountain, LLC was transferred to the Town of Lincoln and that quitclaim deed was recorded.

2nd Step: The Town of Lincoln was going to deed over to CLP Loon Mountain, LLC two parcels, one of which was where the old bridge was located. This deed was reviewed by the Planning Board. There were two (2) public hearings with the Board of Selectmen. The quitclaim deed was then signed by the Board of Selectman and held in escrow per the land swap agreement.

The agreement was the CLP Loon Mountain, LLC was not going to accept the two quitclaim deeds from the Town until after the new bridge was built and the old bridge was taken down and they had a chance to inspect the property.

According to Selectmen’s Representative Robinson, the deed was not signed and is currently at the Hastings & Malia Law office (Town of Lincoln attorneys).

According to Selectmen's Representative Robinson, after a discussion with Town counsel at Hastings & Malia, they said "Everybody seems to have thought that the deed had already been recorded, everyone seems to have forgotten that there is a second (2nd) step that had to be accomplished before that could be done. At the time, it seems clear that everyone intended for it to happen given the fact that we have a signed deed in our file. We agree that the BOS should ask the new owner, Loon/Boyne, if they are interested in taking the quitclaim deed to the two (2) parcels and if they are, proceed with consummating the transaction according to the agreement. Therefore, it seems to be premature for the Planning Board to have this matter on their agenda tonight. The Planning Board could be informed that the transfer has not taken place and that further discussion should be postponed until the ownership is transferred."

Discussion:

Chairman Spanos inquired about the signature of CLP Loon Mountain, LLC on the agreement.

Selectmen's Representative O.J. Robinson explained that the quitclaim deed that has been recorded (which is the first land swap in the agreement) and signed by Joe Sherman of CLP Loon Mountain LLC is for Parcel 3 which is the portion of the lot where the new bridge has been constructed.

Member Paul Beaudin asked a question "why do we need to wait?" He brought up the fact that the successor and assigns could sign the deed. Vice Chairman Chenard agreed.

Selectmen's Representative Robinson explained that the name on the deed would need to be changed to the successor-in-interest, Loon Recreation Corporation. It is agreed by some members present that this issue should not be discussed at this meeting tonight.

Planner Bont and Selectmen's Representative Robinson explained that who the appropriate party was to accept the deeds was an issue that came up and it deserved to be discussed as it relates to the chain of title which needs to be correct. This requires fixing the deed to be clear in the chain of title.

Member Beaudin wanted clarification about the tax maps. President and General Manager for Loon Mountain Recreation Corporation Jay Scambio ("Loon President Scambio") mentioned that the question that there is a signed land swap agreement which he has and that the parking lot item was worked on a couple of years ago. The land was surveyed and research was done which the Town of Lincoln and CLP Loon Mountain, LLC paid for and the survey map is recorded and depicts what is owned by Loon and the property west of it which is owned by the Town. The tax map is inaccurate.

Member Beaudin asked "Who's responsible for updating these maps and how often do they do it?" to which Planner Bont explains that deeds are sent to the mapping company and the tax maps are updated only once a year. Member Beaudin questions that because this transfer is over two years old. Planner Bont believes that parts of the tax maps they have is correct but a title search may not have been done on the remaining areas. Loon President Scambio mentioned that a title search was done through the engineering firm and clarified the item takes time to record. Planner Bont agrees that the tax mappers have been given the updated information.

Vice Chairman Chenard stated that the tax map is wrong because an island is shown that no longer exists. Planner Bont explained that the aerial photography layer of the map they were looking at came from a Google earth map overlay to which Vice Chairman Chenard replied that the "Google map is wrong!"

Chairman Spanos polled the members to see if they want to continue to a date and time specific and re-notice once this is all taken care of. Member Beaudin agreed to wait for re-notice. Loon President Scambio mentioned that he thought there was a decision in April and does not know why the matter needs to be continued.

Member Beaudin expressed concern that the parking lot is not included in the land swap agreement. There are not any plans that show the parking lot and there is not anything in the agreement about the parking lot.

Chairman Spanos read from the previous meeting notes. "Mr. Scambio stated that the simplest approach is to resurvey the land and lay it out on the map as an as-built plan which could then be attached to the amended land swap agreement."

Member Beaudin states that neither of those things have been done. Loon President Scambio stated that the survey map has been done and it is in the hands of the Town. There is a clerical piece where an exhibit in addition to the land swap agreement.

Member Beaudin requested the current map that was sent to the Planning Board as he did not receive it.

Vice Chair Chenard mentioned the request was made from Loon Mountain to make the grassy area into a parking lot and it was agreed by Member Beaudin that it is in the meeting minutes from April and that he was not in favor of it then.

Member Beaudin brought up that the entrances are on the Town of Lincoln right of way. The board reviewed the April meeting minutes to see if the issue was addressed. Loon President Scambio shared a screen shot of the map showing the parking lot and Member Beaudin brought up "the three curb cuts: one going to the east, one going to the west and one off of NH Route 112 are all on Town owned property, and there is nothing in the land swap agreement or anything that says that Loon [Mountain Recreation Corporation] has access to those. Should there be?"

Loon President Scambio responded to Member Beaudin and explained that the curb cut off NH Route 112, into the beach lot, has been there well before any land for a bridge was swapped. Probably before the last bridge was taken down. Loon President Scambio said to Member Beaudin, "So, you are just stirring up the pot to just stir up the pot. We already discussed accessing that area for parking via that curb cut on the east side of the road and the creation of an area for approximately fifty (50) spots."

Member Beaudin agreed that it was discussed previously.

Loon President Scambio said the curb cut on the west side of the road was absolutely there during the planning for the current bridge that people drive across. Member Beaudin said “correct and it was the Town’s at that point as well.” Member Beaudin said, “I was making a statement, Jay, I wasn’t saying it was right or wrong.” Loon President Scambio felt Member Beaudin was insinuating something. Member Beaudin said “Are you going tell me what I was doing, Jay? Really? You’re pretty good, Jay, if you can read my mind you’re doing real good.” Member Beaudin clarified that he was only making a statement that the curb cuts were on town property and that Jay jumped in and went ballistic. Loon President Scambio disagreed that he went ballistic.

The correct map was found by all in their packets.

Chairman Spanos polled the board asking if the board should meet on this again once the deed is recorded and the plan is attached to the deed instead of on the land swap agreement.

All agreed.

IV. OTHER BUSINESS (Staff and Planning Board)

Other business presented by Member Beaudin

A. SOUTH PEAK RESORT

Basis of Design Exceeded

Member Beaudin said the Basis of Design was a condition for approval for the single-family units in South Peak Resort. The Basis of Design was for 4-bedroom units and the average number of bedrooms in the buildings that were built from 2006 have been averaging between 5-12 bedrooms.

Square Footage of Homes Exceeded

The South Peak Resort Building Guidelines say that the square footage for homes is supposed to be between 2,500 and 6,000 square feet maximum. The houses there are between 8,000 – 11,000 square feet in size. They are building over what was approved. Moving forward what are the permits going to be issued for? Research is needed to determine whether or not the developer of South Peak Resort needs to come back before the Planning Board or how the new building permits are going to be issued and for what size houses.

Vice Chairman Chenard said if they can fit the building on the property with the amount of parking, the large homes are legal. Moving forward the lot size could be changed.

Was a Copy of Master Plan for South Peak Resort Ever Recorded?

Member Beaudin wondered if the Master Plan for South Peak Resort was ever recorded.

Planner Bont said a number of years ago she read a document that was recorded that said the Master Plan for South Peak Resort was attached as an Exhibit, however, in reality, the Master Plan was not attached to the recorded document. She never found a recorded Master Plan for South Peak Resort. She found drafts (from John Hettinger), but she never found a signed copy or a recorded copy. Years ago, when she asked the staff at Horizons Engineering at a Planning Board hearing if they had a copy of the recorded Master Plan, they indicated that they did not think the Plan was ever recorded.

Changes to Homeowners Agreement Without Homeowners' Agreement

Alternate Ehrman commented that Vice Chairman Chenard's comments are correct but, in this case, the South Peak Resort was subject to the homeowner's agreement and the process by which the subdivision was hived off was highly irregular. The approximately sixty-three (63) lots that were sold to the second party, who is very close to the primary party, that owned the South Peak Resort development was not openly reviewed. The Homeowner's Association Agreement was changed without the consent or knowledge of the South Peak Resort homeowners. The setbacks and conditions were changed without anyone else's consent but the prior owner.

Alternate Ehrman said it is alleged, due to the lack of minutes or record of what happened, that this change was part of the agreement between the prior owner and the transferee that in order to sell it they would craft a more flexible agreement in terms of restrictions. The responsibilities of the sixty-three (63) lots that are supposed to run with the land were ignored and there is no proof that this was reviewed. The N.H. Attorney General was either not informed of these issues and there is no evidence that they filed the modified homeowner's agreement. None of this was reviewed. "This is highly improper and highly irregular and it creates great contingent liability for the Town of Lincoln." Mr. Ehrman feels very strongly that this matter needs action and should be reviewed and the N.H. Attorney General should be notified.

Chairman Spanos mentioned that he thinks this is a matter to be taken up by the South Peak Resort Community Association (the homeowner's association) and for the NH Attorney General.

Alternate Ehrman strongly feels this matter should be reviewed by the NH Attorney General as well as the Town of Lincoln and the Town has an obligation and a responsibility. Now that there is notice of this situation and the Planning Board has an obligation to follow up.

Member Robinson mentioned that what Mr. Ehrman is saying is correct and the Board of Selectmen is aware of the Application to the NH Attorney General's Office and has requested a copy.

Mr. Ehrman replied that he "strongly suggests to you that they notify the Attorney General's office that you are doing so and that you want their input."

Revised South Peak Resort Master Plan

Member Beaudin inquired about a Revised South Peak Resort Master Plan. Planner Bont mentioned that the Town has received a draft but she is not sure if it is approved or signed.

Member Beaudin inquired about how the Town issues the [sic building permits] Land Use Authorization Permits moving forward. What are the criteria being used when Land Use Authorization Permits are issued? Will the Town follow the basis of design and issue Land Use Authorization Permits based on the basis of design moving forward?

Legal Consultation Requested

Chairman Spanos asked the following questions; What are the laws pertaining to Master Plans, subdivision approvals, basis of design?

Chairman Spanos polled the Planning Board to determine if this question required more research as it is related to the issue with water usage that is currently being reviewed by the Board of Selectmen.

Discussion followed regarding how to proceed the at the next meeting. The Planning Board asked for Town counsel to be present at a private work meeting to figure out how to move forward.

Date set for a non-meeting at 6:00 on Aug. 11, 2021 and a regular meeting at 7:00.

V. ADJOURNMENT
"To adjourn the meeting"
Motion: Member Robinson
Second: Vice Chairman Chenard

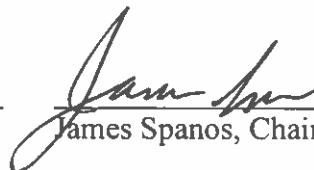
All in favor.

Respectfully submitted,

Judy Sherriff
Recording Secretary

Date Approved: _____

9/2/2021


James Spanos, Chairman

