

**APPROVED**

**PLANNING BOARD  
PLANNING BOARD MONTHLY MEETING  
Tuesday, December 8, 2021 – 6:00PM  
Lincoln Town Hall, 148 Main Street, Lincoln NH**

Due to the current evolving status of COVID-19, this meeting will be a hybrid meeting to be presented both in person with social distancing encouraged (space limited to 8-12) and via ZOOM Video Conferencing to allow for town wide participation. A quorum of the members of the board will have to be physically present at the meeting. All others are encouraged to attend via ZOOM.

**Join Meeting via Zoom:**

<https://us02web.zoom.us/j/81792963078?pwd=SzA0RWpnUEcvV0w2YTUzL29wdE5Odz09>

**Meeting ID: 817 9296 3078**

**Passcode: 890619**

**Or dial by your location 1-929-205-6099 US (New York)**

(See also town website [www.lincolnnh.org](http://www.lincolnnh.org) for the same link, meeting ID and passcode.)

**I. CALL TO ORDER** by the Chairman of Planning Board (PB) James Spanos

**Present:** Chairman Spanos, Selectmen's Representative O.J. Robinson, Member Paul Beaudin, Member Stephen Noseworthy, Alternate Member Mark Ehrman (seated for Vice Chairman Chenard)

**Excused:** Vice Chairman Chenard (joined meeting at 6:15 PM).

**Staff Present:** Fire Chief and Code Enforcement Office/Health Officer/Zoom Host and Moderator Ronald Beard, Planning Board Recorder Judy Sherriff (via Zoom)

**Staff Excused:** Planner Carole Bont (available by phone, but not contacted)

**Guests:**

- **David Beaudin**, resident, Lincoln Water Plant Operator and with an address and co-owner with Mary Conn of 10 Louis Lane (Tax Map 116, Lot 004), Lincoln, NH 03251-0245. (Via Zoom).
- **Taylor C. Beaudin**, nonresident, Route 175 Woodstock, NH 03262, contractor who works for Lincoln Trucking and Excavating LLC, 177 Connector Road, Lincoln, NH 03785
- **Susanne (Susan) A. Chenard**, resident of 11 Liberty Road, Lincoln NH 03251 (Map 107, Lot 061) and Realtor for Loon Reservation Service, 264 Main Street, Suite 12, PO Box 785, Lincoln, NH 03251-0785, and owner of 19 Maple Street (Map 118, Lot 069). Alternate member of the Zoning Board of Adjustment.
- **Kamlesh (Kam) Patel**, nonresident, (APPLICANT) d/b/a Green Wood LLC, Portland Hotels, Inc., 1150 Brighton Avenue, Portland, ME 04102 that owns #LO Pollard Road (Map 112, Lot 001) in the General Use (GU) District (via Zoom).

- **Attorney Mark Stiles**, nonresident, (APPLICANT) d/b/a Mark Stiles Trustee, S&A Offices Realty Trust, PO Box 1113, North Marshfield, MA 02059. Owner of:
  - (1) 155 Main Street (Map 118, lot 065)  
Mark Stiles d/b/a Flow State, LLC  
PO Box 1113  
North Marshfield, MA 02059
  - (2) 153 Main Street (Map 118, Lot 064)  
Mark Stiles d/b/a It's An I-M, LLC  
PO Box 1113  
North Marshfield, MA 02059.
- **Erik Rasmussen**, nonresident, 930 Route 117, PO Box 616, Sugar Hill, NH 03586-0616, attendant at Littleton Transfer Station, Sugar Hill, NH, Attendant at Littleton Transfer Station, Sugar Hill Volunteer Fire Fighter, Sugar Hill Fire Department, Sugar Hill, NH.

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

- **November 10, 2021**

Selectmen's Representative Robinson requested a change to line 297 to read "expressed concern", not "countered".

**Motion to approve as amended by Selectmen's Representative O.J. Robinson**

**Second by Member Beaudin**

**All in favor**

- **November 23, 2021**

Chair Jim Spanos requested a change by adding "James Spanos" to the list of those Planning Board members who were present.

*(Vice Chairman Joe Chenard joined the meeting)*

**Motion to approved as amended by Selectmen's Representative Robinson and Chair Spanos.**

**Second by Member Noseworthy**

**All in favor**

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

**A. General Discussion re: What to Propose for Changes to Land Use Plan Ordinance (LUPO) including, but not limited to:**

1. Add to definitions:

- a. Manufactured Mobile Home Park
- b. Campground

2. Whether to modify Article III.C.3 expressly states: "A non-conforming use may not be expanded, except upon a finding by the Board of Selectmen or their

designee that (a) the expansion reflects the nature and purpose of the existing non-conforming use so as not to constitute a different use and (b) the expansion will not have a different or detrimental impact on the neighborhood in which the use is located.

3. Whether to Modify the Sign Ordinance portion of the LUPO to make it "Content Neutral":
  - a. To comply with US Supreme Court case Reed v. Gilbert, 135 S. Ct. 2218 (2015)
  - b. Whether the Town wants to impose the size restrictions in the "Free Standing Sign" section of the sign regulations on an "Off-Premises Sign," because the Free-Standing Sign section regulates the size of Free-Standing Signs on the business lot when the sign proposed is not on the business lot, it's "Off-Premises." If the Town wants the size regulations contained in the Free-Standing Sign section to apply to an Off-Premises Sign, then the Off-Premises Sign section should be amended to incorporate those size limits. That would eliminate this dispute in the future.
- B. General Discussion re: What to Propose for Changes to Stormwater Management Ordinance, *including, but not limited to*:
  - a. Define "Area of Disturbance"
  - b. Change "A temporary disturbance may be excluded from the calculation for the area of disturbance as long as the area of temporary disturbance
    - i. (a) can be restored to its original pre-development condition ~~within a specified time period~~ and can be stabilized within seven (7) days.
    - ii. (b) not result in the offsite erosion with sedimentation".

**Motion to skip section III Selectmen's Representative O.J. Robinson**  
**Second Member Noseworthy**  
**All in favor**

#### **IV. NEW BUSINESS.**

##### **A. Mark Stiles d/b/a Flow State, LLC & It's An I-M, LLC – New Conceptual**

**Applicant:** Attorney Mark D. Stiles, Trustee  
S&A Offices Realty Trust  
PO Box 1113  
North Marshfield, MA 02059

##### **Current Property Owners:**

- |  |                                    |
|--|------------------------------------|
| (1) Attorney Mark D. Stiles d/b/a Flow State, LLC<br>lot 065)<br>PO Box 1113<br>North Marshfield, MA 02059-1113  | now owns 155 Main Street (Map 118, |
| (2) Attorney Mark D. Stiles d/b/a It's An I-M, LLC<br>Lot 064)<br>PO Box 1113<br>North Marshfield, MA 02059-1113 | now owns 153 Main Street (Map 118, |

**Agent/Surveyor/Engineer:** Applicant/now owner & former property owners were represented by agent.

Joshua M. McAllister, PE  
HEB Engineers, Inc.  
2605 White Mountain Hwy  
North Conway, NH 03860

**Property:** (1) 155 Main Street (Map 118, lot 065), Lincoln, New Hampshire

(2) 153 Main Street (Map 118, Lot 064), Lincoln New Hampshire

Both properties are located in the Village Center (VC) Zoning District.

**Initial Project:**

The initial Site Plan Review project includes:

1. Voluntary merger of two (2) adjacent lots,
2. Demolition of two (2) buildings (one on each of the adjacent lots); and
3. Replacing the two (2) buildings with the construction of a three thousand-five-hundred-eighty-six square foot (3,586 SF) multi-use building consisting of:
  - a. Retail and residential uses:
    - i. Three (3) commercial units totaling two-thousand-four-hundred-sixty square feet (2,460 SF) are proposed on the ground level;
    - ii. Three (3) apartment units on 2<sup>nd</sup> level; and
    - iii. Three (3) apartment units on 3<sup>rd</sup> floor.

**History:**

On January 13, 2021, after duly noticed public hearings, the Planning Board voted:

**A. "To waive the density requirements for this project." (4-1).**

**Rationale:** The Town's Master Plan states, "The Town's Zoning Ordinance should provide for some flexibility and design for residential units and mixed use in established commercial areas particularly in the Village District." The Town's LUPO allows for flexibility in density as long as a project meets all of the other zoning requirements. All other zoning requirements are met.

**AND**

**B. Voted TO APPROVE application for Site Plan Review Approval to merge two adjacent lots, demolish two buildings and replace buildings with one proposed multi-use building WITH THE FOLLOWING CONDITIONS:**

1. **Demonstrate they have sufficient water and sewer infrastructure to the satisfaction of Town Engineer Ray Korber;**
2. **Remove the snow from the parking lot within 48 hours of a storm;**
3. **A stormwater management plan approved by the Town Engineer Raymond Korber; and**

#### **4. Roof runoff mitigation plan approved by Town Engineer Raymond Korber.**

##### **Request for an Extension Granted:**

On October 27, 2021 the Planning Board granted an extension to January 13, 2023.

##### **Rationale:**

Applicant Stiles' Site Plan Review approval was in effect until January 13, 2022, but he wanted to extend his approval out another year and possibly change the plan in the interim. Applicant Stiles requested an extension to allow him to analyze of the approved project as lumber costs come down and the supply chain loosens up. (Problems caused by the COVID-19 pandemic.)

##### **Interim Project Does Not Require Site Plan Review Approval:**

Applicant Stiles developed an "Interim Plan" to downsize the approved project by putting a residential unit on the second floor of 155 Main St. to help stabilize the building and to "keep things moving in the right direction". He asked the Planning Board if he needed Site Plan Review approval to go forward with his "Interim Plan".

Planning Board determined:

1. The proposed "interim use" for 155 Main Street would not cause any parking issues and is a much less intensive use than the proposed new larger building's mixed use with Site Plan Review approval.
2. The proposed interim project has less living space, less square footage, less runoff problems, less parking requirements, and no change in the setback areas than the approved project.
3. Applicant Stiles shall come in once a year for an extension of the Site Plan Review approval.
4. If Applicant Stiles changes his mind about the type of project he wants to do, he shall come in for a modification of the Site Plan Review plan.
5. In the meantime, Applicant Stiles has permission to use the existing building for (1) Business Use of "Retail, Consumer Service, ... or other business nonindustrial use which does not qualify as a Home Business" on the first floor and (2) A residential apartment on the second floor.
6. Applicant Stiles does not need to come back for a second Site Plan Review approval for the proposed interim use, but would require a Land Use Authorization Permit to add bedrooms and fixtures that use water and sewer services.
7. At this time the property of 153 Main Street will be left as it is right now.

##### **Decision:**

On October 27, 2021 at the Applicant's request, the Planning Board voted to grant an extension to January 13, 2023.

## **Presentation**

Applicant Stiles is interested in discussing the existing building at 153 Main Street, Lincoln, NH. He analyzed the approved project at 153 Main Street, and determined that the building will need to be torn down; there is no way that they will be able to rehabilitate the building. The new proposal would be to tear down the building and replace it with a new building which would be very similar in nature to the building at 155 Main St. but he would like the use of the new building to be a commercial (i.e., “business use”) with two (2) residential units above. He is interested in getting the Planning Board’s thoughts.

## **Discussion/Questions**

Chairman Spanos asked Applicant Stiles if he was intending to build out the approved project in phases. Applicant Stiles replied that he intends to build in phases, but then minimize what the actual project is without prejudicing the approval he does have; he is planning to scale the project back substantially.

### **Concept #1 – Tear Down and Rebuild 153 Main Street to Match 155 Main Street with Commercial Space Below and Residential Units Above**

Applicant Stiles mentioned that one of his ideas was to replace the house located at 153 Main St. with a more modern habitable structure that would be commercial (i.e., “business use”) on the bottom, and with two (2) residential dwelling units above, similar to the approved project.

Selectmen’s Representative O.J. Robinson asked if the open space between the two buildings would remain. Applicant Stiles replied “at this point, yes”. He adds he is not certain how that will go down in the future because ultimately his goal would be to replicate those same structures and have three (3) “business use” units across the front on the first floor with fewer residences on the second floor than are currently approved.

Chairman Spanos asked if this would be a three (3) story structure. Applicant Stiles replied that “no, it would be a two (2) story structure”. The buildings would look like the Mill Houses of 153 Main Street and 155 Main Street, but those buildings would string along together through the back so that the second floor would be split in two.

Member Beaudin asked if the building’s footprint would remain the same. Applicant Stiles replied that the new building’s footprint may exceed the current footprint and encroach into the current green space a little bit, giving the building a larger commercial footprint below and more space for the residences above.

Member Beaudin stated that increasing the footprint of the building may cause an issue as it would be bigger than the current building. Selectmen’s Representative Robinson clarified that the proposed building at 153 Main Street is bigger than the current building, but the proposed building would be following the Site Plan Review Plan that has already been approved.

Chairman Spanos asked if the two lots would be merged. Applicant Stiles said he does not plan to merge lots just yet. During the prior hearing for the approved project there were concerns about the water runoff from the buildings onto the sidewalk. Applicant Stiles believes the new proposal will address that problem as well.

Chairman Spanos inquired about the proposed parking. Applicant Stiles mentioned that what he is proposing to build is well within what has been approved; in fact, he is scaling it back.

Chairman Spanos asked the Planning Board Members if they had any more questions. Member Beaudin commented that he feels there should be a Site Plan Review approval because it is a change from the original concept. Any abutters who may have concerns should have an opportunity to voice their concerns. Chairman Spanos agreed that the project is evolving into something totally different from what was approved.

Member Beaudin clarified that he does not have a problem with the proposal but feels it ought to go through the public Site Plan Review process.

### **Concept #2 – Three Identical Buildings in a Row**

Applicant Stiles asked if he should be formulating a much bigger modification to the plan if his goal is to have three (3) identical structures, at some point, that mirror one another. Applicant Stiles asked if he would need to modify his special permit or could he work with what he has. He wants to rehabilitate what is already there while not prejudicing the specific Site Plan Review Approval that he already has.

A new Site Plan Review approval would be required.

The Planning Board would look favorably on the project being a phased project if the two lots were merged and then he added the new building in and then added to the buildings. That would show the intent of eventually moving towards the original plan of merged buildings on a merged lot.

Vice Chairman Chenard started a discussion regarding the third building that was mentioned. Chenard was concerned about a potential fire protection issue that may arise if three buildings are not spaced a minimum of twenty (20) feet apart. Selectmen's Representative Robinson added that the buildings could be merged into one building and that would solve that potential fire protection concern.

### **Concept #3 – Brewery Tap Room Concept**

Applicant Stiles has a third concept. He mentioned that a brewery approached him about using 155 Main Street. The concept would be to rent the entire building at 155 Main Street to the brewery to set up a "Tap Room" (similar to a coffee shop with beer, not brewed onsite). This proposed use would include using the green space for outdoor seating, a fire pit, lights and maybe outdoor lighting, and possibly entertainment like a two-person acoustic-type entertainment.

He would like to use the space between the two buildings or parking lot for outdoor entertainment space with tables and entertainment, possibly two performers and expanding the tap room space into the outdoors.

Vice Chair Chenard mentioned that a "Tap Room" in the State of New Hampshire would have to serve food.

Selectmen's Representative Robinson said the "Tap Room" would be considered a "restaurant use" under the LUPO. It is the same category that a coffee shop would fall under. You are also

required to serve food in order to sell beer. (See Appendix A with NH RSA 178 Liquor Licenses and Fees.)

Vice Chairman Chenard added that Site Plan Review approval would be needed to address concerns by neighbors regarding potential noise and parking.

Applicant Stiles is interested in finding out if this concept is something that the Town would approve of.

Chairman Spanos mentioned that “restaurant use” is not restricted in the Village Center (VC) District.

### **Planning Board’s Recommendations**

Member Beaudin noted that Applicant Stiles has presented three (3) different proposals and these three proposals would need to be reviewed individually to see how they fit and how much parking would be needed. With the Site Plan Review process, abutters would be able to discuss any concerns they have about the proposed project.

### **Concept #3 Brewery Tap Room**

Applicant Stiles asked the Planning Board what their thoughts were regarding the outdoor component. The Planning Board members discussed that the outdoor component is not restricted but the abutters, noise and parking are issues that need to be addressed.

Applicant Stiles asked what the next steps should be without prejudicing the Site Plan Review approval that has already been approved.

Selectmen’s Representative O.J. Robinson listed a number of scenarios that Applicant Stiles could propose to help to reduce possible issues related to noise and parking, including vegetation screening and fencing.

### **Phasing**

A discussion regarding details of the phasing of the project began.

The Planning Board said that using 155 Main Street for a “Tap Room” would be a “Change of Use” from one type of “Business Use” to another type of “Business Use”. It would be a change from one “Business Use” (i.e., “Retail, Consumer Service, or Other Business Non-Industrial Use Other Than Above Which Does Not Qualify as a Home Business”) to another different type of “Business Use” (i.e., “Restaurant”). (In the discussion, the participants called it a change in use from “retail commercial” to “restaurant commercial”).

If the building at 155 Main Street were to become a “Tap Room”, the “Change in Use” would trigger the need for Site Plan Review.

The issues the Planning Board thought would need to be addressed in the context of the Site Plan Review process would be:

- Potential increase in traffic;
- Need for more parking
- Use of the outdoor space



Selectmen's Representative Robinson clarified that a "Change in Use" triggers Site Plan Review which, if approved, would trump the current Site Plan Review approval that Applicant Stiles has already for the two properties.

Member Beaudin raised concerns about phasing of the project without another Site Plan Review approval.

### **Changing the Footprint – Merger of Lots**

Applicant Stiles asked about keeping the existing building footprint the same versus extending out the building footprint at 153 Main Street, and locating the 153 Main Street building closer to 155 Main Street with the possibility of merging the two buildings at a later date.

Chairman Spanos commented that the Planning Board would look more favorably at Applicant Stiles proposal if he merged the two (2) lots. Vice Chairman Chenard clarified that if the lots were merged, it would only require one Site Plan Review. Applicant Stiles understands that the Planning Board would look more favorably at a phased project if the two (2) lots were merged into one (1) lot.

### **Restaurant Required to Serve Alcohol in NH – No Bars in New Hampshire Without Food**

Applicant Stiles and the Planning Board continued to discuss the use of 155 Main Street as a "Tap Room". Selectmen's Representative Robinson said if it were to become a "Tap Room" the use would be considered a Business Use "Restaurant" due to the NH State Laws requiring the establishment to serve food if that establishment wants to serve beer. A "Restaurant" designation would also require the operator to have a proper commercial restaurant kitchen which is another issue to consider.

Applicant Stiles asked about having a food truck on premises instead of an on-premises restaurant for the "Tap Room". Planning Board members were not sure about whether the State Liquor Commission would allow a food truck, however the Planning Board agreed that a food truck would need to be part of the Site Plan Review. (See Appendices A and B attached.)

Member Noseworthy inquired about the number of parking spaces in the current approved Site Plan. After consulting the plan in their packets, the Planning Board and the Applicant Stiles agreed that there is a total number of eighteen (18) parking spaces.

Chairman Spanos polled the Planning Board asking if Applicant Stiles needed to come back for Site Plan Review approval for the concept put before them which entails:

- Tearing down the existing building at 153 Main Street;
- Building a new building at 153 Main Street;
- merging the two lots (153 Main Street and 155 Main Street); and
- building out a portion of the approved site plan with
  - One (1) commercial space on the first floor; and
  - Two (2) residential spaces on the second floor.

After a discussion the Planning Board agreed. However, Vice Chairman Chenard still had reservations about the Planning Board determining that Applicant Stiles would not need to come back for Site Plan Review approval for the change.

**B. Kamlesh Patel – Request for an Extension due to delays caused by COVID-19**

**Fairfield Inn: Case #SPR 2018-07 M122 L001 – Kamlesh Patel d/b/a Green Wood, LLC**

**Applicant/Engineer:** Thomas S. Greer, P.E., of Walsh Engineering Associates, Inc., One Karen Drive Suite 2A, Westbrook ME 04092 agent for property owner Kamlesh Patel d/b/a Green Wood, LLC, 1150 Brighton Avenue, Portland, ME 04102. Thomas Greer retired and William Walsh, P.E., of Walsh Engineering Associates, Inc., One Karen Drive Suite 2A, Westbrook ME 04092 is the successor Applicant.

**Property Owner:** Kamlesh Patel d/b/a Green Wood, LLC, 1150 Brighton Avenue, Portland, ME 04102

**Property:** Pollard Road #LO (Map 122, Lot 001) northeast of the intersection of Forest Ridge Drive and NH Route 112 (Kancamagus Highway). The property is located in the General Use (GU) District.

**Proposed Project:**

Application of Thomas S. Greer, P.E., of Walsh Engineering Associates, Inc, for Kamlesh Patel d/b/a Green Wood, LLC, requesting Site Plan Review approval to change the use of one vacant lot of 6.35 acres and to make site improvements to include a 96-unit hotel and 5-unit condominium residential structure with parking for 121 cars for a total of 95,390 square feet of impervious surface. The project includes a gravel wetland for stormwater treatment & two infiltration systems to limit the total volume of runoff.

**APPROVAL GRANTED WITH CONDITIONS:**

On July 22, 2020, the Planning Board **GRANTED** the Application for Site Plan Review for the above-referenced project with the **FOLLOWING CONDITIONS:**

1. The Owner/Applicant shall provide a Mylar with three full sets of plans with all updates to the Town;
2. The Owner/Applicant shall relocate the cross walk closer to the intersection with NH Route 112/Kancamagus Highway to connect the two ends of the bike/pedestrian pathways on either side of Forest Ridge Drive. The Owner/Applicant shall provide written approval by the NHDOT regarding the crosswalk.
3. The Owner/Applicant shall submit all necessary information and documentation on the proposed fire protection system as required by the Town. Information may include but not be limited to: a basis of design report describing the design and operations of the system, calculations, plans and details. System shall meet all Town and NFPA codes and requirements. Information and documentation shall be prepared by a fire protection engineer licensed in the State of New Hampshire. Fire suppression system shall be reviewed and approved by the Town and the NH State Fire Marshalls Office.
4. The Owner/Applicant shall provide information to the Town and the Town's Engineer to verify the sewer capacity of the Main Street sewer. Information shall be as required by

the Town's Engineer. Sewer capacity shall be sufficient to accept flows from the proposed development.

5. The Owner/Applicant shall provide performance bonding which is payable to the Town for all on-site improvements (i.e., the construction, drainage and all associated site development work, including all of the utilities, stormwater, and grading), in order to ensure that the Owner/Applicant will complete all site work in accordance with the plans. In the event the bond is called by the Town, the Planning Board shall schedule and hold a public hearing to consider revocation of the Site Plan Approval per RSA 676:4-a. No further work may proceed on site, and no further Land Use Authorization Permits shall issue without Planning Board approval in the event the bond is called and the above-referenced revocation proceedings are initiated. The amount of the bond shall be based on the Owner/Applicant's engineer's estimate of \$1,700,000.00 construction costs for the project which includes a 15% contingency. The applicant can request release of the bond once all conditions have been met from the Planning Board.

#### **Statutory Vesting (RSA 674:39)**

The provisions of RSA 674:39 protect approved and recorded subdivision and site plans from subsequent changes in planning board regulations and zoning ordinances. They also protect municipalities from having development that is based on outdated regulations and ordinances, or from development work that has dragged on for years in a less-than-half completed state.

In the first instance, every approved and recorded subdivision or site plan is exempt from all subsequent changes in subdivision and site plan regulations and zoning ordinances for a period of five years after the date of approval (except those regulations and ordinances that expressly protect public health, such as water quality and sewage treatment), provided that:

- Active and substantial development has begun in accordance with the approved plat within 24 months after the date of approval;
- Development remains in full compliance with public health regulations;
- The subdivision plat or site plan conforms to the planning board's regulations in effect at the time of approval.

#### **Presentation**

Applicant Kamlesh Patel stated that he is looking for an extension due to the increase cost of building materials due to Covid-19. He went on to state that he has completed almost all of the conditions excluding Condition #1 and Condition #5.

1. **Condition #1:** The Owner/Applicant shall provide a Mylar with three full sets of plans with all updates to the Town;

5. **Condition #5:** The Owner/Applicant shall provide performance bonding which is payable to the Town for all on-site improvements (i.e., the construction, drainage and all associated site development work, including all of the utilities, stormwater, and grading), in order to ensure that the Owner/Applicant will complete all site work in accordance with the plans. In the event the bond is called by the Town, the Planning Board shall schedule and hold a public hearing to consider revocation of the Site Plan Approval per RSA 676:4-a. No further work may proceed on site, and no further Land Use Authorization Permits shall issue without Planning Board approval in the event the bond is called and the above-referenced revocation proceedings are initiated. The amount of the bond shall be based on the Owner/Applicant's engineer's estimate of \$1,700,000.00 construction costs for the project which includes a 15% contingency. The applicant can request release of the bond once all conditions have been met from the Planning Board.

With regards to Condition #2, which is to relocate the sidewalk in the front, he has the drawings and dropped them off to the office but was not sure if Planner Bont had included the drawings in the Planning Board members' packets to tonight's meeting.

2. **Condition #2:** The Owner/Applicant shall relocate the cross walk closer to the intersection with NH Route 112/Kancamagus Highway to connect the two ends of the bike/pedestrian pathways on either side of Forest Ridge Drive. The Owner/Applicant shall provide written approval by the NHDOT regarding the crosswalk.

Chairman Spanos asked Applicant Kamlesh Patel if he had provided the required Mylar with three (3) full sets of plans with all updates to the Town (**Condition #1**). Patel has not provided the Town with a Mylar or 3 full sets of plans with updates yet.

Chairman Spanos also referred to **Condition #5** as it relates to posting a performance bond. Patel has not provided the Town with a Performance Bond yet.

Applicant Patel replied that **Condition #3** involves a "water" analysis [Fire Flow Analysis] that is supposed to be completed by Weston & Sampson. The Fire Flow Analysis has not yet been completed but is expected by early this week. He has not been able to reach Town Engineer Ray Korber to find out the status of the report.

Applicant Patel said he did not send any Fire Protection Plans to the Lincoln Fire Chief yet as he is waiting on the "water analysis report" [Fire Flow Analysis].

Chairman Spanos stated that the Site Plan Review approval was signed on August 5, 2020 and is valid for two (2) years [provided "active and substantial development" has begun in accordance with the approved plat within 24 months after the date of approval; the development remains in full compliance with public health regulations; and the site plan conforms to the Planning Board's regulations in effect at the time of approval] which would be August 5, 2022. [See Appendix C for RSA 674:39.] Chairman Spanos asked Applicant Patel if there is any reason he did not want to wait until he got close to the expiration date before asking for an extension.

Applicant Patel replied that he received a call from Planning Assistant Lisa Peluso that his approval was going to expire soon and that he would need to ask for an extension and pay \$50.00. He would like to start breaking ground starting in May of 2022. The Planning Board discussed granting an extension until August 5, 2023.

**Motion to grant an extension to August 5, 2023 by Member Beaudin  
Second by Selectmen's Representative O.J. Robinson**

Member Noseworthy inquired about the status of Condition #4.

4. **Condition #4:** The Owner/Applicant shall provide information to the Town and the Town's Engineer to verify the sewer capacity of the Main Street sewer. Information shall be as required by the Town's Engineer. Sewer capacity shall be sufficient to accept flows from the proposed development.

Applicant Patel replied that the Sewer Capacity Analysis was completed by Horizons Engineering Corporation and "signed off" by Town Engineer Ray Korber. Applicant Patel noted that there is a nine (9) foot sewer pipe that needs to be changed and he plans to do the work in the spring when there is not a lot of traffic.

Chairman Spanos added that in granting the extension, Applicant Patel should have enough time to be able to comply with all of the five (5) conditions.

**All in favor**

*Chairman Spanos returned back to item III re: the Stormwater Management Ordinance on the agenda.*

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

**C. General Discussion re: What to Propose for Changes to Stormwater Management Ordinance, *including, but not limited to:***

- a. Define "Area of Disturbance"
- b. Change "A temporary disturbance may be excluded from the calculation for the area of disturbance as long as the area of temporary disturbance
  - i. (a) can be restored to its original pre-development condition ~~within a specified time period~~ and can be stabilized within seven (7) days.
  - ii. (b) not result in the offsite erosion with sedimentation".

**Motion to open to public comment by Selectmen's Representative O.J. Robinson  
Second by Vice Chairman Chenard  
All in favor**

Lincoln Trucking Contractor Taylor Beaudin asked about the proposed wording for the section regarding "restoration to original predevelopment".

Member Paul J. Beaudin II, clarified what he thought the proposed wording meant: "can be restored to its original pre-development condition and can be stabilized within seven (7) days".

Chairman Spanos added that the goal is to restore the area disturbed from the installation of the utilities.

The Planning Board discussed and brainstormed about what the definition of the word “stabilized” should be. They also discussed other concerns they had about the types of materials used to restore a disturbed area.

The Planning Board decided the wording to be the following:

*“A temporary disturbance may be excluded from the calculation for the area of disturbance as long as the area of temporary disturbance (a) can be stabilized in seven (7) days so as to not result in off-site erosion with sedimentation (b) permanently stabilized by the end of construction so as to not result in off-site erosion with sedimentation.”*

The Planning Board agreed that in their opinion this proposed change would decrease the number of homeowners who would trigger the Stormwater Management Ordinance (SMO) and would be required to submit a Stormwater Management and Erosion Control Plan and, thereby streamline the permitting process while also preventing off-site run-off at the same time.

Contractor Taylor Beaudin asked the Planning Board how many areas in town had experienced flooding issues over the past years.

The Planning Board discussed a number of locations where issues with stormwater run-off have been problematic over the past several years.

Member Beaudin recalled that Town Engineer Ray Korber had mentioned that since the inception of the SMO there have been fewer issues with flooding and run-off and the intent of the SMO is working.

**Motion to close public discussion by Member Beaudin  
Second by Selectmen’s Representative O.J. Robinson  
All in favor**

### **Definitions continued...**

**Motion to change the definition of disturbance to read:**

*“A temporary disturbance may be excluded from the calculation for the area of disturbance as long as the area of temporary disturbance (a) can be permanently stabilized in seven (7) days so as to not result in off-site erosion with sedimentation (b) shall be permanently stabilized by the end of construction so as to not result in off-site erosion with sedimentation.”*

**By Member Beaudin**

**Second by Selectmen's Representative O.J. Robinson**  
**All in favor**

The Planning returned to the agenda:

**III. CONTINUING AND OTHER BUSINESS**

A. General Discussion re: What to Propose for Changes to Land Use Plan Ordinance (LUPO) **including, but not limited to:**

1. Add to definitions:
  - a. Manufactured Mobile Home Park
  - b. Campground

**Public Hearing Date: Wednesday, January 5, 2022**

The Planning Board set the first public hearing for proposed amendments to the Land Use Plan Ordinance (LUPO) to Wednesday, January 5, 2022.

**Define Mobile Home Parks**

The Planning Board discussed the proposed language for Manufactured Housing Parks.

The Planning Board reviewed a portion of the applicable state statutes pertaining to Manufactured Housing Parks is as follows:

**NH RSA 205-A Regulation of Manufactured Housing Parks**  
**Section 205-A:1 Definitions.**

**205-A:1 Definitions. –**

As used solely in this chapter unless the context specifically requires otherwise:

- I. "Manufactured housing" includes, but is not limited to, manufactured housing as defined by RSA 674:31, and also includes any prefabricated dwelling unit which:
  - (a) Is designed for long term and continuous residential occupancy;
  - (b) Is designed to be moved on wheels, as a whole or in sections; and
  - (c) On arrival on the site, is complete and ready for occupancy, except for incidental unpacking, assembly, connection with utilities, and placing on support or permanent structure.
  - (d) Nothing herein shall be construed to include campers or recreational vehicles within the definition of "manufactured housing".
- II. "Manufactured housing park" means any parcel of land under single or common ownership or control which contains, or is designed, laid out or adapted to accommodate 2 or more manufactured houses. Nothing herein shall be construed to apply to premises used solely for storage or display of manufactured housing.

The Planning Board reviewed the proposed language for LUPO referring to the definition in RSA 205-A:1 above and compared it to the proposed language crafted by Planner Bont.

**Manufactured Housing Park** – Shall have the same meaning as set forth in RSA 205-A (Regulation of Manufactured Housing Parks). Manufactured Housing Park shall be considered a “Business Use”.

The Planning Board discussed what the words “single ownership” or “common ownership” meant as part of the definition in RSA 205-A:1.

**Motion to adopt above definition of Manufactured Mobile Home Park by Member Beaudin  
Second by Vice Chairman Chenard  
All in favor**

**Define Manufactured Housing**

The Planning Board discussed the proposed language for Manufactured Housing Parks.

The Planning Board reviewed a portion of the applicable state statutes pertaining to Manufactured Housing is as follows:

TITLE LXIV  
PLANNING AND ZONING  
CHAPTER 674  
LOCAL LAND USE PLANNING AND REGULATORY POWERS  
Manufactured Housing  
Section 674:31

**674:31 Definition.** – As used in this subdivision, "manufactured housing" means any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing as defined in this section shall not include presite built housing as defined in RSA 674:31-a.

**Source.** 1983, 447:1. 1985, 104:1, eff. July 9, 1985.

The Planning Board reviewed the proposed language for LUPO referring to the definition in RSA 205-A:1 above and compared it to the proposed language crafted by Planner Bont.

**Manufactured Housing** – Shall have the same meaning as set forth in RSA 205-A (Regulation of Manufactured Housing Parks) and RSA 674:31.

**Motion to accept the definition of Manufactured Housing provided by Carole Bont and to adopt the Campground and Camping Park definitions as well by Member Beaudin  
Second Selectmen’s Representative O.J. Robinson**



**All in favor**

Chairman Spanos read from page 19 Land Use Schedule for “Residential Uses”.  
Currently, Manufactured Homes are permitted in the Zoning Districts as follows:

- Small Business Development District (SBD) – NO
- General Use (GU) District – YES
- Village Center (VC) District – NO
- Village Residential (VR) District – NO
- General Residential (GR) District – YES
- Rural Residential (RR) District – YES
- Mountain Residential (MR) District – NO

**Motion to permit Manufactured Housing in the following areas:**

- Village Residential (VR) District – YES
- Village Center (VC) District – YES

**by Member Beaudin**

**Second Selectmen’s Representative O.J. Robinson**

**All in favor**

**Motion to amend the proposed language for the Manufactured Housing Park Definition by adding the sentence: “Shall be considered a ‘Business Use’.” by Member Beaudin**

**Second Selectmen’s Representative O.J. Robinson**

**All in favor**

**Motion to allow Manufactured Mobile Home Park in the following areas:**

- Small Business Development District (SBD) – NO
- General Use (GU) District – YES
- Village Center (VC) District – YES
- Village Residential (VR) District – YES
- General Residential (GR) District – YES
- Rural Residential (RR) District – YES
- Mountain Residential (MR) District – NO

**By Member Beaudin**

**Second Member Noseworthy**

**All in favor**

**Define Campground and Camping Park**

The Planning Board did not discuss the proposed definition for Campground and Camping Parks; however, the definitions were in the Planning Board packets for the meeting.

TITLE XIX  
PUBLIC RECREATION  
CHAPTER 216-I  
RECREATIONAL CAMPGROUNDS AND CAMPING PARKS  
Section 216-I:1

**216-I:1 Definition. –**

In this chapter:

VII. "Recreational campground or camping park" means a parcel of land on which 2 or more campsites are occupied or are intended for temporary occupancy for recreational dwelling purposes only, and not for permanent year-round residency, excluding recreation camps as defined in RSA 170-E:55, I

The Planning Board had the applicable state statute pertaining to Campground and Camping Park in the packets. Planner Bont had made the following proposal for the definitions for these two terms:

- A. **LUPO, Article IV DEFINITIONS.** Add the following definitions to the Land Use Ordinance:
9. **Campground** – Shall have the same meaning as set forth in RSA 216-I (Recreational Campgrounds and Camping Parks).
  10. **Camping Park** – Shall have the same meaning as set forth in RSA 216-1 (Recreational Campgrounds and Camping Parks).

Chairman Spanos proposed to leave the definition of Campground “as is” on the agenda. No one objected.

**Change the Jurisdiction Over the Expansion of Non-Conforming Uses from the Board of Selectmen (BOS) to the Zoning Board of Adjustment (ZBA)**

Chairman Spanos read the next item. The Land Use Plan Ordinance (LUPO) currently states:

A. **LUPO, Article III APPLICABILITY AND NON-CONFORMING USES**

**Section C. NON-CONFORMING USES.** A non-conforming use may be continued subject to the requirements set forth in this Section.

3. A non-conforming use may not be expanded, except upon a finding by the Board of Selectmen or their designee that (a) the expansion reflects the nature and purpose of the existing non-conforming use so as not to constitute a different use and (b) the expansion will not have a different or detrimental impact on the neighborhood in which the use is located.

The proposed changes were as follows:

**B. LUPO, Article III APPLICABILITY AND NON-CONFORMING USES**

**Section C. NON-CONFORMING USES.** A non-conforming use may be continued subject to the requirements set forth in this Section.

3. A non-conforming use may not be expanded, except upon a finding by ~~the Board of Selectmen or their designee~~ the Zoning Board of Adjustment that (a) the expansion reflects the nature and purpose of the existing non-conforming use so as not to constitute a different use and (b) the expansion will not have a different or detrimental impact on the neighborhood in which the use is located.

Selectmen's Representative O.J. Robinson reminded the Planning Board that the Planning Board previously voted to make this change and a motion to accept the proposed amendment is not needed.

Chairman Spanos read the next item on the agenda: Whether to Modify the Sign Ordinance portion of the LUPO to make it "Content Neutral":

1. To comply with US Supreme Court case Reed v. Gilbert, 135 S. Ct. 2218 (2015)
2. Whether the Town wants to impose the size restrictions in the "Free Standing Sign" section of the sign regulations on an "Off-Premises Sign," because the Free-Standing Sign section regulates the size of Free-Standing Signs on the business lot when the sign proposed is not on the business lot, it's "Off-Premises." If the Town wants the size regulations contained in the Free-Standing Sign section to apply to an Off-Premises Sign, then the Off-Premises Sign section should be amended to incorporate those size limits. That would eliminate this dispute in the future.

The Planning Board discussed and determined that "a sign is a sign" and should not be designated as "off-premises sign". The Planning Board also agreed that they needed more information about how to determine what are "content neutral signs".

Selectmen's Representative O.J. Robinson asked the Planning Board members a question.

"Do we want to make changes to our sign ordinance that makes sense to us or do we just want to go through it [Sign Ordinance] section by section and make it content neutral to abide by the law?"

The Planning Board had a discussion and decided that they needed more advice on this topic before making any changes to the Sign Ordinance. Selectmen's Representative O.J. Robinson said the next step should be to gather more information – like consulting with North Country Council.

Planner Bont highlighted the portions of the Sign Ordinance in the Land Use Plan Ordinance where she believes the Sign Ordinance violates the Supreme Court decision in Reed v. Gilbert and those highlighted sections were in the Planning Board packets. Chairman Spanos recalled that the Planning Board was going to look into the cost of having North Country Council weigh in and that the fee for that service should be added to the Planning Board Budget.

**Motion for the Planning Board to table any changes to the Sign Ordinance for this year and get a price from the North Country Council to review the Sign Ordinance and make it content neutral by Member Beaudin.**

**Second Vice Chairman Chenard.**

**All in favor.**

### **South Peak Resort**

#### **Maximum Building Size Defined**

Selectmen's Representative Robinson told the Planning Board that the Board of Selectmen (BOS) received the letter from the Planning Board about enforcing the Conditions of Approval ("the rules") over at the South Peak Resort. The BOS agreed that they will enforce the maximum house size of twenty-five hundred (2,500) to six thousand (6,000) square foot as defined by the Planning Board approval.

Selectmen's Representative Robinson said that most importantly, the Planning Board's Site Plan Review approval in the Master Plan explicitly states that the building's square footage as defined in the Planning Board's approval, specifically excludes garage space and unfinished cellar [or basement] space; that space is not to be included in the assessment of building square footage. However, the garage space and unfinished basement space may or may not be part of the impervious footprint.

Member Beaudin added that this size restriction is also written in the Master Plan for some homes.

#### **Alteration of Terrain (AoT) Permit and Maximum Building Footprint**

Selectmen's Representative Robinson stated that the Alteration of Terrain (AoT) Permit for South Peak Resort was designed for and approved by the State of New Hampshire's Department of Environmental Services (NH DES). That AoT designed was based on four thousand (4,000) square feet of impervious surface per lot. Anything over four thousand (4,000) square feet of impervious surface per lot will at least trigger a review of the checklist for the Stormwater Management Ordinance (SMO).

Selectmen's Representative Robinson stated that if somehow, property owners in South Peak Resort are building homes that have a footprint that is greater than four thousand (4,000) square feet, but are disturbing less than fifty (50) percent of the size of the lot, those homes should not trigger the SMO.

Selectmen's Representative Robinson stated that homes with a footprint of less than four thousand (4,000) square feet have already been calculated in the Alteration of Terrain (AoT) Permit. Runoff from those lots would be handled by the stormwater management strategies that the developer planned as part of the AoT.

788 **Maximum Number of Bedrooms in South Peak Resort**

789 Selectmen's Representative Robinson stated that when the Alteration of Terrain (AoT) was  
790 submitted, the number of bedrooms in those homes was estimated at 1.75 to 4 bedrooms per  
791 dwelling unit. The Town (by and through the Board of Selectmen) is not looking to enforce  
792 beneath that range. However, the total approval for the South Peak Master Plan was one  
793 thousand eighteen (1,018) units and two thousand two hundred twenty (2,220) total bedrooms.  
794 Therefore, which ever they reach first is the limit of what was approved by the Planning Board in  
795 2006 and is the limit of the amount of water and sewer the town has promised as a vested project.  
796 Anything over that amount will require them:

- 797 a. to come back before the Planning Board for approval and  
798 b. come back to the BOS as it will be on a first come first served basis after they reach the  
799 two thousand two hundred twenty (2,220) bedrooms.

800 Chairman Spanos added that basically the people who have built their homes first have an  
801 advantage over the people building later.

802 Selectmen's Representative Robinson clarified that the plan of the policy is to notify the  
803 developer and the homeowners associations that there is a limit on the total number of bedrooms  
804 that can be created in the South Peak Resort. It does not matter if the homes are being occupied  
805 as part-time or full-time residences; each bedroom is calculated for one hundred fifty (150)  
806 gallons per day allotment. It would be up to the developer and the homeowner's association to  
807 regulate how many bedrooms they will allow.

808 Member Beaudin said he does not agree. He believes that the number of bedrooms should be  
809 based on each unit.

810 **The recording stopped abruptly here at 1:57.29**  
811

812 **IV. PUBLIC PARTICIPATION AND OTHER BUSINESS:**

813 No public participation or other business.

814 **VI. ADJOURNMENT**

815 **Motion to adjourn by Paul Beaudin.**

816 **Second by Joe Chenard.**

817 **All in favor**  
818

819 Respectfully submitted,

820  
821 *Judy Sherriff*

822 Recording Secretary

823

824 Date Approved: 2/23/2022

825

826

  
Chairman Spanos

## Appendix A

NH RSA 178 Liquor Licenses and Fees.

**2018 New Hampshire Revised Statutes**

**Title XIII - Alcoholic Beverages**

**Chapter 178 - Liquor Licenses and Fees**

**Section 178:21 - On-Premises Beverage and Liquor Licenses.**

**Universal Citation: NH Rev Stat § 178:21 (2018)**

**RSA 178:21 On-Premises Beverage and Liquor Licenses. –**

I. (a) The commission may issue a license to any of the types of businesses specified in paragraph II of this section in any town which has voted to accept the provisions of RSA 663:5, I(b), (c), and (d). The license shall entitle the licensee to serve beverages containing at least 1/2 percent and not more than 6 percent alcohol by volume at 60 degrees Fahrenheit by the glass or other suitable container and by the bottle with the cork or cap removed; liquor containing more than 6 percent alcohol by volume at 60 degrees Fahrenheit, by the glass or other suitable container; and wines, by the glass, by the bottle with the cork or cap removed; or other suitable container, under rules adopted by the commission.

(b) No beverage or liquor shall be consumed on the premises except that which is sold by the licensee.

(c) No beverage or liquor shall be removed from the licensed premises by patrons, except as provided by RSA 179:27-a.

II. The commission may authorize establishments, as they are defined in RSA 175:1, **having full service restaurants to sell beverages and liquor at such time as food is available.**

(a)(1) Licenses for Full Service Restaurants. **The commission may issue a license to any full service restaurant. Such license shall entitle the licensee to sell beverages and liquor at tables in the approved dining rooms of the restaurant with or without meals when the restaurant kitchen is in operation and meals are being actively promoted and served in that dining room. The dining room shall not, however, be used as a substitute for lounge operations. Licenses shall be granted only to restaurants approved by the commission** and which show the commission on forms, filed with the license application, covering the 12 most recent calendar months prior to filing, that **at least 50 percent of the gross sales of any such licensee is in food. Restaurants with annual food sales of at least \$75,000 shall be exempt from the 50 percent requirement.** The commission shall at least annually review each license, and application for renewal, on the conditions stated in this paragraph.

(2) The **dining room shall be open for business at least 5 days a week for evening meals,** unless the commission has granted an exemption.

**(3) Private groups contracting for function rooms may also be served beverages and liquor without food.**

(4) Notwithstanding the fact that the towns of Newington, New Hampton, and Landaff have voted or vote in any referendum to prohibit the sale of liquor and beverages, a license to sell beverages by the glass or other suitable container or by the bottle with cap removed; wines or fortified wines by the bottle with cap removed; wines or fortified wines by the bottle, if the cork is drawn, or liquor by the glass or the suitable container to customers **with meals at tables only**, may be issued to any full service restaurant in the towns of Newington, New Hampton, and Landaff, but only if the restaurant is open and does business at least 10 months of every calendar year and if said restaurant shall meet all other requirements of this section.

(5) Except as provided in this paragraph, no beverages or liquor shall be consumed in the licensed areas except those that are sold by the licensee. With the permission of the commission, a licensee may charge a fee for consumption of privately owned table wine stored on the premises and **consumed with the purchase of a full-course meal**.

(b)(1) **Hotel Full Service Restaurant**. The commission may issue a license to any hotel in any town. Notwithstanding the fact that the town where the hotel is located has voted not to approve the sale of beverages in said town, the license issued to a hotel shall entitle the licensee to:

(A) Sell beverages and liquor by the glass or other suitable container and wine by the bottle, if the cork is drawn, or by other suitable container to guests **in the dining room or in the rooms of guests**.

(B) Sell beverages, liquor, and wine by the bottle which shall be **delivered to the rooms of guests**, provided that such sales are not made below the cost of such beverages and liquor.

(C) Include a specified quantity of complimentary beverages and liquor as part of a contract for the hosting of a convention or offer a specified quantity of complimentary beverages or liquor in soliciting such conventions. As used in this paragraph "convention" means an assembly of persons participating in a business, political, professional, or other organizational gathering. Notwithstanding RSA 175:4 or any rules adopted under that section, hotels may advertise and offer package deals to resident guests, which include complimentary drinks, provided such offers shall be limited to persons of legal drinking age.

(D) Sell beverages and liquor in bottles or containers not exceeding one liter capacity, which shall be stored under lock and key in a cabinet or miniature refrigerated bar in hotel rooms and which shall be available only to hotel room guests who are of legal drinking age.

(2) The **dining room shall be open for business at least 5 days a week for evening meals**, unless the commission has granted an exception.

(3) Hotels **may serve beverages and liquor in the dining room without meals provided the hotel kitchen is in operation and meals are being actively promoted and served in the dining room. The dining room may not be used as a substitute for lounge operations.**

(c) Bed and Breakfasts. The commission may issue a license to any bed and breakfast which has at least 4 rentable rooms and a dining area capable of seating the total number of registered guests and shall entitle the licensee to:

- (1) Sell liquor and beverages to registered guests in any approved area or in the rooms of guests.
- (2) Sell liquor and beverages by the bottle which shall be delivered to the rooms of registered guests, provided that the charge for such liquor and beverages is not below cost.

(d) Dining Cars. The commission may issue a license to any railroad or car corporation, or designee, operating any dining cars in which food is served within this state, authorizing the holder of the license to sell in such cars liquor and beverages to be consumed in such cars. Such license shall be good throughout the state in both license and non-license territory, and only one such license shall be required for all cars operated in the state by the same owner.

(e) Vessels. The commission may issue a special license to the owner or operator of a passenger vessel operating out of any port of the state. Such license shall allow the sale of liquor with food or beverages in any area of the vessel approved by the commission.

Source. 2003, 231:13. 2013, 23:2, eff. July 15, 2013.



## Appendix B.

### Why Do All New Hampshire Bars Have to Sell Food?

New Hampshire Public Radio, by Taylor Quimby 12-29-2017

#### Excerpts only

*There's a funny thing about bars in New Hampshire. Technically, there are none. There are only restaurants.*

*But why?*

After Prohibition ended, when the [21st Amendment](#) was ratified in 1933, states were given a choice.

They could choose to continue banning liquor sales entirely. They could sell licenses, and let private stores and companies sell liquor. Or they could take over liquor sales themselves - in essence, create a state-run monopoly to oversee operations and collect taxes.

About a third of the country chose that last option, including New Hampshire.

Today we call these states "control states." There are 17 in total, and they all do things a little differently.

"Basically, it's still illegal if a state wants to make it illegal, and everything is 'mother, may I?' Everything we do is what we allow," said John Hunt, a 16-term Republican state representative from Cheshire County.

Over the years, he's sponsored a whole bunch of bills on New Hampshire's liquor laws.

"So originally, it was thought that the best thing to do when you have alcohol around is that you should have food. So, there's always been a food requirement. There are no 'bar' bars in New Hampshire."

## **Appendix C.**

### **TITLE LXIV PLANNING AND ZONING**

#### **CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS**

##### **Regulation of Subdivision of Land**

##### **Section 674:39**

##### **674:39 Five-Year Exemption. –**

- I. Every subdivision plat approved by the planning board and properly recorded in the registry of deeds and every site plan approved by the planning board and properly recorded in the registry of deeds, if recording of site plans is required by the planning board or by local regulation, shall be exempt from all subsequent changes in subdivision regulations, site plan review regulations, impact fee ordinances, and zoning ordinances adopted by any city, town, or county in which there are located unincorporated towns or unorganized places, except those regulations and ordinances which expressly protect public health standards, such as water quality and sewage treatment requirements, for a period of 5 years after the date of approval; provided that:
  - (a) Active and substantial development or building has begun on the site by the owner or the owner's successor in interest in accordance with the approved subdivision plat within 24 months after the date of approval, or in accordance with the terms of the approval, and, if a bond or other security to cover the costs of roads, drains, or sewers is required in connection with such approval, such bond or other security is posted with the city, town, or county in which there are located unincorporated towns or unorganized places, at the time of commencement of such development;
  - (b) Development remains in full compliance with the public health regulations and ordinances specified in this section; and
  - (c) At the time of approval and recording, the subdivision plat or site plan conforms to the subdivision regulations, site plan review regulations, and zoning ordinances then in effect at the location of such subdivision plat or site plan.
- III. Once substantial completion of the improvements as shown on the subdivision plat or site plan has occurred in compliance with the approved subdivision plat or site plan or the terms of said approval or unless otherwise stipulated by the planning board, the rights of the owner or the owner's successor in interest shall vest and no subsequent changes in subdivision regulations, site plan regulations, or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect such improvements.
- IV. The planning board may, as part of its subdivision and site plan regulations or as a condition of subdivision plat or site plan approval, specify the threshold levels of work that shall constitute the following terms, with due regard to the scope and details of a particular project:
  - (a) "Substantial completion of the improvements as shown on the subdivision plat or site plan," for purposes of fulfilling paragraph II; and
  - (b) "Active and substantial development or building," for the purposes of fulfilling

paragraph I.

- V. Failure of a planning board to specify by regulation or as a condition of subdivision plat or site plan approval what shall constitute "active and substantial development or building" shall entitle the subdivision plat or site plan approved by the planning board to the 5-year exemption described in paragraph I. The planning board may, for good cause, extend the 24-month period set forth in subparagraph I(a).

**Source.** 1983, 447:1. 1989, 266:17, 18. 1991, 331:1, 2. 1995, 43:5; 291:7, 8. 2004, 199:1. 2009, 93:1. 2011, 215:1, eff. June 27, 2011.

## **2020 PLANNING BOARD HANDBOOK PAGE V-21**

### **STATUTORY VESTING (RSA 674:39)**

The provisions of RSA 674:39 protect approved and recorded subdivision and site plans from subsequent changes in planning board regulations and zoning ordinances. They also protect municipalities from having development that is based on outdated regulations and ordinances, or from development work that has dragged on for years in a less-than-half completed state.

In the first instance, every approved and recorded subdivision or site plan is exempt from all subsequent changes in subdivision and site plan regulations and zoning ordinances for a period of five years after the date of approval (except those regulations and ordinances that expressly protect public health, such as water quality and sewage treatment), provided that:

- Active and substantial development has begun in accordance with the approved plat within 24 months after the date of approval;
- Development remains in full compliance with public health regulations;
- The subdivision plat or site plan conforms to the planning board's regulations in effect at the time of approval.

**Planning Boards should define and identify what improvements and features as well as percentage of completion of features that constitutes "Active and Substantial Completion of Improvements" in their subdivision and site plan regulations.**

Once the project's improvements have been substantially completed in compliance with the approved subdivision plat or site plan, unless otherwise stipulated by the planning board, the project is permanently protected from subsequent ordinance or regulation changes, except for impact fees. If the board fails to specify and define by regulation what is "active and substantial" for a particular project, the project automatically gets the five years of protection.

