

APPROVED

**PLANNING BOARD
PLANNING BOARD MONTHLY MEETING
PUBLIC HEARING**

**Wednesday, February 9, 2022 – 6:00 PM
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/83403336959?pwd=VE9HN0tFMGxReEluRm1MOGZOekQzUT09>

Meeting ID: 834 0333 6959

Passcode: 888612

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 Spanos

Members Present: Chairman James Spanos, Vice Chairman Chenard (arrived at 6:10 PM) Selectmen's Representative O.J. Robinson, Member Stephen Noseworthy, Member Paul Beaudin, and Alternate Member Mark Ehrman (via ZOOM).

Excused: Vice Chairman Joe Chenard (arrived at 6:10 PM.)

Staff Present: Fire Chief/Code Enforcement Office/Health Officer/ZOOM Host and Moderator Ronald Beard, Deputy Fire Chief Ryan Fairbrother (via ZOOM), Planner Carole Bont, Town Engineer Ray Korber, (via ZOOM) Planning Board Recorder Judy Sherrieff (via ZOOM).

Consultants: Town Engineer Raymond Korber, PE, of KVPartners, LLC.

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).
- **Jeanne Beaudin** (via ZOOM)
- **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
- **Steve Loynd** (via ZOOM), nonresident, real estate broker from Alpine Lakes Realty, 7 Linwood Plaza, Lincoln, NH 03251

- **Rick Evans**, nonresident, Timber Appraiser, State of New Hampshire Department of Revenue Administration (via ZOOM)
- **Mark Bogosian**, nonresident, (APPLICANT) Longfellow Design Build and South Peak Resort, 367 Main Street, Falmouth, MA 02540 a developer who owns the following:
 - [d/b/a Loon Slopeside, LLC, owns 9 Riverside Terrace #2C, (Map 118, Lot 039001-02-0000C)]
 - South Peak Road (Map 121, Lot 057)
 - 43 Crooked Mountain Road (Map 121, Lot 011)
 - All properties formerly owned by “FC-Loon, LLC”) and not already sold:
 - Crooked Mountain Road #100 (Map 118, Lot 018)
 - Crooked Mountain Road #101 (Map 118, Lot 019)
 - Crooked Mountain Road #102 (Map 118, Lot 020)
 - Crooked Mountain Road #103 (Map 118, Lot 021)
 - Crooked Mountain Road #104 (Map 118, Lot 022)
 - Crooked Mountain Road #105 (Map 118, Lot 023)
 - Crooked Mountain Road #106 (Map 120, Lot 001)
 - Crooked Mountain Road #107 (Map 120, Lot 002)
 - Crooked Mountain Road #108 (Map 120, Lot 003)
 - Crooked Mountain Road #109 (Map 120, Lot 004)
 - Crooked Mountain Road #110 (Map 120, Lot 005)
 - Crooked Mountain Road #111 (Map 120, Lot 006)
 - Crooked Mountain Road #112 (Map 120, Lot 007)
 - Crooked Mountain Road #113 (Map 121, Lot 049)
 - Crooked Mountain Road #114 (Map 121, Lot 051)
 - Crooked Mountain Road #115 (Map 120, Lot 022)
 - Crooked Mountain Road #116 (Map 120, Lot 021)
 - Crooked Mountain Road #117 (Map 120, Lot 023)
 - Crooked Mountain Road #118 (Map 120, Lot 024)
 - Crooked Mountain Road #119 (Map 120, Lot 025)
 - All properties currently owned by South Peak, LLC, 367 Main Street, Falmouth, MA 02540
 - South Peak Road (Map 118, Lot 039) (95.71 Acres)
 - Parcel 2 #LO (Map 118, Lot 040) (93.93 Acres)
 - Parcel 1 #LO (Map 119, Lot 003) (32.1 Acres)
 - Crooked Mountain Road #LO (Map 121, Lot 050) (0.56 Acres – site of Pemi Base Camp)
 - LO SS East Branch River (Map 119, Lot 004) (53 Acres)
 - South Peak L/O (Map 124, Lot 066) (28.28 Acres)
- **Jon Warzocha, P.E.** (ENGINEER FOR APPLICANT) Horizons Engineering, CEO of Horizons Engineering, 34 School Street, Littleton, NH 03561 working for Mark Bogosian.
- **Thaddeus (Thad) Presby**, (APPLICANT) President of Presby Construction, Inc., 244 Main Street, Franconia, NH 03580

- **Fred Englert** (resident), (APPLICANT) for Clarks Trading Post, 110 Daniel Webster Hwy, Lincoln, NH 03251

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

- **January 26, 2022**

- Chair James Spanos, Selectmen's Representative Jack Daly, Member Stephen Noseworthy, Member Paul Beaudin

Motion to skip minutes by Member Beaudin
Second Selectmen's Representative O.J. Robinson
All in favor

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

- A. Rick Evans, Timber Appraiser, State of New Hampshire Department of Revenue Administration

What is Considered "Site Work" and NH Timber Harvesting Laws, etc.

Presentation

Timber Appraiser Rick Evans has been asked to explain, to the Planning Board, when an "Intent to Cut" is required and why it's required. RSA 79:1 II b5. He reads the **highlighted** portion below.

RSA 79:1 II b 5–

II. (a) "Owner" means:

- (1) For purposes of joint tenants or joint tenants with rights of survivorship, every owner that holds title to the subject property.
- (2) For purposes of tenants-in-common, any one or more of the tenants-in-common that hold title to the subject property. For purposes of RSA 79:10, I(a), any one or more of tenants-in-common may sign an intent to cut. Provided, however, that non-signing tenants-in-common shall have been notified by certified mail by the applicant of the intent to cut at least 30 days prior to cutting and that a bond or surety is filed to secure payment of the yield tax if any tenant-in-common does not sign or give a power of attorney to sign a notice of intent to cut.
- (3) A previous owner who retains timber rights to land and who registers his or her claim with the registry of deeds.
- (4) Any person who has purchased stumpage and cutting rights on public lands.

(b) The following persons shall not be required to file an intent to cut or be subject to the tax imposed by this chapter:

- (5) A person who cuts or causes to be cut, within the tax year, up to 10,000 board feet of logs and 20 cords of wood or the equivalent in whole tree chips (100 tons), from the person's own land within a municipality, for land conversion purposes other than timber growing and forest uses, provided that those persons intending to convert the use of the land have secured all required permits including, but not limited to, building permits, subdivision or zoning permits, excavation permits, or site plan approvals, as necessary for the use to which the land will be converted, and are able to furnish proof of such permits.

Mr. Evans explains that if a person were to cut under ten thousand (10,000) board feet or twenty (20) cords or under one hundred (100) tons of chips, basically three (3) truck-loads of wood, for the purposes of land conversion and have their local permits in place, an Intent to Cut is not required.

Mr. Evans refers to Rev Rule 3407.1 which defines it a bit further. It says that owners exempted under RSA 79.1 II b 5 shall complete and file form PA-7 which is the Intent to Cut form and pay yield tax on all wood and timber cut if the volume exceeds ten thousand (10,000) board feet and twenty (20) cords or one hundred (100) tons of chips.

So, if the developer has the local permits in place and the developer stays under the volumes, no Intent to Cut is necessary. If they don't have any of the local permits in place, an Intent to Cut is required and if they are going to exceed those volumes, an Intent to Cut is required.

Discussion

Chairman Spanos states that every municipality has different permit requirements therefore if a Town wants to wait for the lot to be cut before issuing a permit there shouldn't be anything wrong with that. Mr. Evans replies that as far as RSA 79.1 II b 5 is concerned there isn't anything wrong with that. **If that permit is going to be required for the converted use at some point that permit needs to be in place before the cutting takes place or the Intent to Cut is required.**

Planner Bont gives Mr. Evans an example of a recent situation and asks if what the Town did was correct or not. A person wanted to develop some lots and has decided to clear the lots first in advance of building the spec house. They clear the lot in February and apply for a Land Use Permit in April. Would that be an acceptable situation even though they don't have a Land Use Permit?

Mr. Evans says it sounds like that should have the Intent to Cut. Mr. Evans clarifies and reads that all timber in the State of New Hampshire requires an Intent to Cut and is taxable unless the owner qualifies for an exemption and in terms of land use conversion exemption that was previously read (RSA 79.1 II b 5) and (Rev Rule 3407.1).

Mr. Evans explains the exemption is per owner per municipality, per year. If the same entity owns each of those three lots it would be the total volume combined. They couldn't claim that exemption for each lot. They could claim it once per town, per year.

Member Beaudin asks who gives the exemption.

Mr. Evans clarifies that no one gives the exemption. If the owner qualifies for it they get it, it's not given or granted. It falls on the owner and the logger. A verbal warning, summons and fine can be given if it is obvious that more than the allotted amount has been harvested.

Member Beaudin inquires about who is responsible, the loggers or the owner.

Mr. Evans answers that both the owner and the logger are responsible. When it comes to assessing the volumes, that responsibility should fall under the logger. Typically, where they have problems is when the owner hires a logger and the logger tells them they are under the ten thousand (10,000 board feet or twenty (20) cords and they are under one hundred (100) tons and the logger asks the owner if they have their local permits. The owner says they have their local permits and the logger proceeds to cut, when in reality the owner did not have their local permits. This falls on the logger and the loggers are in trouble because they listened to the owner when they really shouldn't have.

Land Conversion Use

Mr. Evans states that all house lots or building lots in the State of New Hampshire require a building permit.

Planner Bont explains that in the Town of Lincoln they have a Land Use Permit which is a Zoning Permit because they didn't adopt the RSA to locally enforce the state building code therefore they are not allowed to issue building permits only Land Use Permits.

Mr. Evans explains further that they will need a driveway permit if there is not currently one in place.

Planner Bont replies that she gives driveway permits with the Land Use Permit. If the lot is within a development they would still require a driveway permit as the fire truck and emergency vehicles have to be able to get up there and that is why the Town requires a driveway permit.

Member Beaudin believes otherwise and will look into that.

Summary

Mr. Evans gives a quick summary. In order to qualify for the exemption and not need the Intent to Cut you need to have the local permits. If you go over the ten thousand (10,000) board feet or twenty (20) cords it doesn't matter whether you have the permits or not; you are not exempt, if you go over the volume.

Chairman Spanos wonders if the Town allows lots to be cleared prior to issuing the Land Use Permits they are OK.

Mr. Evans states that it is the Town's prerogative to allow that, but the Town would need the Intent to Cut prior to the cut.

Audience comments

Thaddeus (Thad) Presby, from the audience, asks a question. Isn't it typical, on a small-scale house lot, to do the clearing before surveying and laying out a plan before any permits are issued?

Mr. Evans responds that it's going to vary from town to town and if you know what your converted use is going to be (clearing a half acre with the intention of building a house) and you know that you are going to need a building permit or driveway permit at some time you need to have them in place if you want to qualify for the exemption.

Member Beaudin asks who issues the Intent to Cut.

Mr. Evans responds that the municipality's assessing officials which would be the Board of Selectmen. The BOS would also be responsible to determine the value of the timber that is cut.

Kamlesh Patel from the audience (via ZOOM) asks Mr. Evans if the valuation of the timber varies from town to town.

Mr. Evans replies that each town accesses the value of the timber and twice a year the NH Department of Revenue provide the towns with the average stumpage ranges that are being paid to owners throughout the state. The stumpage ranges are generated from stumpage surveys that are sent out twice a year to landowners, foresters and loggers to try to determine what the stumpage ranges that are being paid for all the products in the state.

Kamlesh Patel asks how he should educate himself on the process of clear his properties in the future.

Mr. Evans suggests he contact the State of New Hampshire Department of Revenue Administration and they will provide him with the most recent average stumpage value list and compare it to what his logger is quoting to be sure he is being treated fairly. He could also hire a licensed forester who would be looking out for his best interest.

Vice Chairman Chenard adds that Mr. Patel can call the Grafton County Forester as well.

A. CONCEPTUALS

1. **Conceptual #1**: South Peak Resort Developer Mark Bogosian and Horizons Engineer Jon Warzocha – re: South Peak Resort
 - a. **Further Discussion re: South Peak Resort Basis of Design**

Presentation

Jon Warzocha discusses the possible development of additional infill subdivision to further build out the existing area at South Peak Resort. Most of the lots are part of the larger contiguous parcel. There is one lot already carved out and that will be divided into two lots. At this point they haven't found any restrictions but will continue to research to be certain they have buildable lots before an application is submitted.

Member Beaudin asks if the density will change by adding these lots.

Mr. Warzocha confirms that this will come up against the density requirement. He notes they will not submit an application on anything that's not feasible and these particular lots are lower lots and will not be impacted by the water situation. The lots will all be approximately fifteen thousand (15,000) square feet.

Discussion

Alternate Mark Ehrman asks Mr. Warzocha if this plan conforms with the Homeowner's Agreement.

Mark Bogosian replies that these lots conform to the bylaws the association had when they changed them to do the additional lots on the lower level, they stopped adding lots at that point. The lots will be designed to mirror what is already existing in those areas.

Alternate Ehrman concludes that it does not conform to the agreement as it existed prior to that modification.

Mr. Warzocha believes it does conform and will be sure to review and supply that information from the attorneys that are more familiar with the exact agreements. The lots will be part of South Peak Resort and will meet the same standards of character and quality.

Alternate Ehrman responds that those standards are different than they were five or ten years ago and the minimal house size has been decreased as the size of the lots went down.

Mr. Warzocha confirms that they will make sure they address conformance with all the agreements.

Alternate Ehrman expresses that what they are doing is to conform the agreements ex post facto to the status quo that they want to arrive at which is not the same as maintaining a pre-existing agreement. He understands the NH law that a developer controls a development then the developer is able to retroactively or prospectively modify the homeowner's association because they control the majority of the shares. He doesn't believe that is the expectation of people when they buy property and it could be difficult moving forward as it is in his opinion a breach of trust.

Mr. Bogosian clarifies that these lots will meet the existing bylaws as they are.

Mr. Beaudin wonders if the Master Plan would need to be changed due to the change in density and if some of the abutters would be displeased.

Mr. Warzocha responds that Mr. Bogosian owns the abutting lots.

Master Plan

Discussion re: whether a change in density would require an update to the Master Plan. Planner Bont will research if the change in density requires an update to the Master Plan.

Mr. Warzocha adds that they will account for the changes in density as it relates to the Master Plan. This would be considered a new phase and will be backed out of the original Master Plan.

Member Beaudin wonders when there are many changes along the way at which point would the Master Plan reflect the changes.

Mr. Warzocha replies that the Master Plan, in his view, is the overall intent and doesn't show all of the little pieces. This is an infill of an existing subdivision which is going to be subdivided further within the subdivision. They will not be changing the land use or doing something different than was previously in the Master Plan. If they were to do something that doesn't relate to the Master Plan and doesn't fit within it then they would fully update the Master Plan.

Selectmen's Representative O.J. Robinson agrees that this subdivision development plan would fit with in the current Master Plan and no update would be needed.

Member Beaudin is wondering how this phase fits in with the previously approved phases and how it all relates open spaces.

Mr. Warzocha ensures that they will provide a detailed accounting table on how they plan to track up to the density cap. He will also review the Master Plan to get a full understanding of how the phasing was laid out.

Chairman Spanos explains that there are concerns with the size of some of the houses that have been built because they are larger than they should have been and use more of the resources that were allotted for them.

Mr. Warzocha understands those concerns and plans to address those concerns.

Member Beaudin suggests they review the green spaces and water and sewer capacities.

Stormwater, Green Spaces and Water and Sewer

Code Enforcement Office Beard asks how will this affect the Alteration of Terrain Permit (AOT).

Mr. Warzocha replies that it will be within the approved area and they will review the stormwater runoff. He will review that the amount of impervious surface that was assumed in the previous AOT.

Selectmen's Representative O.J. Robinson feels it is the responsibility of the developer to figure out the Green Space Calculation as it will be different due to the changes that are being proposed. He also agrees with Code Enforcement Officer Beard that they need to address the stormwater runoff plan. He adds that there is a lot that appears, on the map, to be in water.

Mr. Warzocha agrees that the lot is a wet lot but he believes there is a viable footprint that can support a small home and plans to demonstrate that all the lots are buildable lots.

Selectmen's Representative O.J. Robinson discusses the water and sewer and that it was done in 2006 and wanted to confirm that there is going to be enough water and sewer capacity. He recalls that the previous developer built a sewer pipe that crosses the river. As long as they stay within in the parameters of the Master Plan they should be fine as it relates to the water and sewer.

Mr. Warzocha understands that when they submit their application they will show an accounting for the unit count, the open space and the water and sewer allocations.

Member Beaudin suggests they add what has been built already and adjust for some homes of the homes that are bigger or smaller as well.

Fire Protection

Member Beaudin asks that they review how the lots will affect the fire protection capabilities as they related to insurance, the number of hydrants, and traffic.

Mr. Warzocha will be sure to answer all of those questions.

Mr. Warzocha plans that they will be back with a subdivision application in approximately four weeks as they intend to build on the lots this year.

2. **Conceptual #2:** Thaddeus (Thad) Presby, President of Presby Construction, Inc., 244 Main Street, Franconia, NH 03580 purchased a vacant lot with an Off Premise Sign known as "Main Street #D LO" (Map 118, Lot 002) (5.43 Acres) from Welsey E. Finch d/b/a The Finch Group, TFG Lincoln Properties, LLC, c/o The Finch Group, 6111 Broken Sound Parkway NW #150, Boca Raton, FL 33487-2774. Purchaser would like to subdivide the 1 lot into 3 lots for development – not sure what for yet.

Discussion

Planner Bont starts the discussion clarifying that the survey that they have before them is a conceptual one.

Mr. Presby understands the survey is "moot" and starts his presentation. He plans to subdivide the lot into three (3) lots and keep the two (2) smaller lots. The lot across from the Town Office is under contract and he will need to let that lot go. There are many easements that cross through the property. His attorneys assure him that it is OK.

Chairman Spanos asks if Cooper Memorial Drive is an easement over his land.

Mr. Presby replies that it is. They plan to have the lot line on the west side to follow along the easement for the Cooper Memorial Drive.

Vice Chairman Chenard adds that the State is not allowing any new curb cuts on NH Route 112. He wanted to share that information with Mr. Presby not to dissuade him but to let him know there could be some problems with it.

Mr. Presby understands that potential access to NH Route 112 would be a struggle as he has had a conversation about it with NH Department of Transportation's Jim McMahon.

Mr. Presby has some questions: Can the lots with access to Cooper Memorial Drive be subdivided? He has discussed a one-way-in scenario.

Chairman Spanos notes that the lot on the east side would be land locked and doesn't think the Planning Board can create a lot with no access.

Mr. Presby has no problem entering from Cooper Memorial Drive and wonders if he could make a right-of-way or do they have to build a "Town Spec Road".

Chairman Spanos replies that a private road would have to be built over that lot to get to the other lot, regardless of what DOT might want in the future.

Mr. Presby said the goal is to subdivide and have access off Cooper Memorial Drive and it shouldn't be a huge issue as he could try to work with the NH DOT at a later date.

The Planning Board suggests that he also look into whether or not he would need permission to access Cooper Memorial Drive as the original easement may or may not include language that the owner can also use that road for access.

3 Conceptual #3: Fred Englert for Clarks Trading Post – Adding to fenced in area for bear enclosure (Map 109, Lot 007)

Discussion

Mr. Englert mentions that Clark's Trading Post added some bear cubs last year because some of the other bears are getting older. The family agrees that it is necessary to expand the existing bear pens that are across the street from the main operation. The plan is to push out the fencing on the north side of the existing pens.

Mr. Englert demonstrates what the fencing plan is with the maps that he has brought. He notes adding a 15 x 30 ft. enclosure with a 10 x 10 shift and a 6 x 8 mudroom totaling approximately eight thousand (8,000) square feet.

Planner Bont inquires how far would the new structure and fence be from the property boundary line.

Mr.Englert replies that it will bi-sect the boundary. The existing fence just tips over the boundary line involving Lot 7 and Lot 8.

Planner Bont mentions that the ownership is not identical. Did they intend to merge the lots?

Mr. Englert clarifies that “it has been watered down a bit” but currently both pieces have the same owners as it has been passed down from the previous generation. Efforts are being made to properly take care of the ownership issue.

Planner Bont asks if he would be considering merging those lots due to the town’s set-back requirements and if the new structure were to be in the set-back it would need to go before the Zoning Board of Adjustment (ZBA) for a variance. If the lots were to be merged the problem of the set-backs would disappear.

Mr. Englert mentions that there have been discussions to adjust the lot line vs. a merger.

Chairman Spanos recommends an easement but the Planning Board members note that it would still require going to the ZBA.

Member Beaudin feels adjusting the lot line is the simplest way to go.

Planner Bont clarifies that the fence set-back is one (1) foot off the property line and the building, regardless of the use (general use and rural residential), is fifteen (15) feet.

Mr. Englert inquires about water and sewer. He notes that there will be very little use and there is one standpipe with a hose attached for cleaning the enclosure and a 4’ x 6’ x 2’ pool. He reviewed the application and wasn’t sure how the pool would qualify. He wonders if it would be considered a jacuzzi?

Planner Bont explains that the Town uses an equivalency based on the amount of water usage.

In conclusion, the Planning Board suggests a lot line adjustment or move the building to be out of the setback area.

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

A. Stormwater Management Ordinance (SMO) and definition of “area of disturbance”.

1. Whether the Planning Board is authorized to tell the Town staff how they want Town staff to interpret the words “Area of Disturbance” or whether the Board of Selectmen or their designees are authorized to interpret the

- words as the enforcement arm of the Town.
2. Whether the Town Office staff should include the entire area of disturbance caused by the development in enforcing the terms of the Stormwater Management Ordinance (SMO) or whether the Town Office staff should only include the area of disturbance that only affects the area within the lot itself (not all of land disturbed within the common areas, including roadways and common land not in the roadways).

Chair Spanos suggested skipping this matter tonight and asked Town Engineer Korber if he could be in attendance for next meeting. Town Engineer Korber agreed to attend the next meeting.

V. PUBLIC PARTICIPATION AND OTHER BUSINESS:

No public comment or other business

Motion to adjourn. Member Beaudin.
Second. Vice Chairman Chenard
All in favor.

Respectfully submitted,

Judy Sherriff
Recording Secretary

Date Approved: February 23, 2022


Chairman Spanos