

LINCOLN PLANNING BOARD
REGULAR MEETING MINUTES
WEDNESDAY, JANUARY 27, 2016 – 6:00PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH

APPROVED

Present: Chairman Jim Spanos, Vice-Chairman R. Patrick Romprey, OJ Robinson - Selectmen's Representative, John Hettinger, Paula Strickon, Ron Beard (alternate & Fire Chief), Taylor Beaudin (alternate), Norman Belanger (alternate)

Members Excused: Callum Grant (alternate)

Members Absent: None

Staff Present: Town Manager and Town Planner Alfred "Butch" Burbank, Planning and Zoning Administrator Carole Bont, Ronald (Ron) Beard, Lincoln Fire Chief, Theodore (Ted) Smith Lincoln Police Chief, and Wendy Tanner (recorder)

Town Attorney Present: Peter Malia, Esq., of Hastings Malia Law Office, P.A., 376 Main Street, PO Box 290, Fryeburg, ME 04037-0290

Guests:

Applicant(s) for change of zoning designations for two lots at 30 O'Brien Avenue (Tax Map 117, Lot 025) and 31 O'Brien Avenue (Tax Map 117, Lot 019) from General Use (GU) District to Village Center (VC) District

- **R. Patrick Romprey** – resident and representing applicant Carla J. Romprey, for 30 O'Brien Avenue, Lincoln, NH 03251 – property owned by Carla J. Romprey, as Trustee of the Carla J. Romprey March 1998 Revocable Trust; Carla J. Romprey, as Trustee of the Carla J. Romprey March 1998 Revocable Trust also owns a ½ undivided interest as a tenant in common with Diane Caras in property with the address of 31 O'Brien Avenue (Map 117, Lot 019).

Residents and Abutters:

- **Roger Harrington** – resident of 131 Pollard Road, PO Box 386, Lincoln, NH 03251 and owner with Sarah A. Harrington of 131 & 133 Pollard Road (Map 117, Lot 003).
- **Janice B. Keown** – abutter and property owner of 20 Maple Street, Lincoln, NH 03251 (Map 118, Lot 072) whose address is 4 Valley Stream Road, Holderness, NH 03245.
- **Wilbert A. ("Drew") Keown** – abutter and property owner of 20 Maple Street, Lincoln, NH 03251 (Map 118, Lot 072) whose address is 4 Valley Stream Road, Holderness, NH 03245.
- **Robert LaMontagne**, resident of Florida, and property owner at 99 Pollard Road, (Map 117, Lot 020), PO Box 847, Lincoln, NH 03241.
- **Paulette LaMontagne**, resident of Lincoln, and property owner at 99 Pollard Road, (Map 117, Lot 020), PO Box 847, Lincoln, NH 03241.
- **Mary Jo Levitsky** – resident, abutter and property owner of 11 O'Brien Avenue, Lincoln, NH 03251 (Map 117, Lot 024) whose address is PO Box 184, Lincoln, NH 03251-0184.

- **Jeffrey C. Martel** – resident, abutter and property owner of 113 Pollard Road, Lincoln, NH 03251 (Map 117, Lot 021) owned by Jeffrey C. & Karin Martel, Trustees of the Martel Family Trust, PO Box 66, Lincoln, NH 03251-0066.
- **Karin Martel** – resident, abutter and property owner of 113 Pollard Road, Lincoln, NH 03251 (Map 117, Lot 021) owned by Jeffrey C. & Karin Martel, Trustees of the Martel Family Trust, PO Box 66, Lincoln, NH 03251-0066.
- **McNamara, Kevin** – nonresident, real estate agent of RE/MAX in the Mountains, 264 Main Street, Suite 2, PO Box 175, Lincoln, NH 03251-0175, owner of 264 Main Street #2 (Map 117, Lot 120000-01-00015), and co-owner with Karen McNamara of 264 Main Street #3 (Map 117, Lot 120000-01-00003).
- **Myles Moran** – husband of Mary Jo Levitsky and resident of 11 O'Brien Avenue, Lincoln, NH 03251 (Map 117, Lot 024) whose address is PO Box 184, Lincoln, NH 03251-0184 and Principal/Broker for Moosilauke Realty, PO Box 333, 104 Main Street, North Woodstock, NH 03262 and Principal of Kastmast Construction, LLC, PO Box 333, 104 Main Street, North Woodstock, NH 03262-0333.
- **Patti Jo Ouellette** – resident, abutter and property owner of 32 Maple Street, Lincoln, NH 03251 (Map 114, Lot 010) owned by Patricia A. Papio & Patti Jo Ouellette, PO Box 232, Lincoln, NH 03251-0232.
- **Tanya L. Patterson** – abutter and property owner 33 Maple Street (Tax Map 114, Lot 104), PO Box 328, North Woodstock, NH 03262.
- **Cindy Rineer** – resident and co-owner with Dennis L. Rineer of 176 Pollard Road (Map 114, Lot 057) PO Box 878, Lincoln, NH 03251-0878.
- **David Strathdee** – resident of 24 Maple Street, Lincoln, NH 03251 (Map 117, Lot 002). Property is owned Diane L. Johnson, 235 Old Bay Road, New Durham, NH 03855.
- **Gail Tremblay** – resident of 19 Louann Lane (Map 117, Lots 017). Wife of Thomas Tremblay. Property is owned by Thomas Tremblay, Trustee of the Thomas P. Tremblay Revocable Trust, PO Box 235, Lincoln, NH 03251-0235.
- **Thomas Tremblay** – resident of 19 Louann Lane (Map 117, Lot 017). 19 Louann Lane and & L/O Pollard Road (Map 117, Lot 016) are both owned by Thomas Tremblay, Trustee of the Thomas P. Tremblay Revocable Trust, PO Box 235, Lincoln, NH 03251-0235. Tremblay is President and business owner of Coldwell Banker Linwood Real Estate of Lincoln, 189 Main Street, Lincoln, NH 03251.
- **Wayne A. Wright** – resident and property owner of 118 Pollard Road, Lincoln, NH 03251 (Map 117, Lot 038), PO Box 691, Lincoln, NH 03251-0691.
- **Jan Wolowski** – abutter and property owner of 22 Maple Street (Map 118, Lot 071), of 1A Ricci Drive, North Providence, RI 02911-24, also owns [19 School Street (Map 113, Lot 101)], [36 Lodge Road #A212 (Map 117, Lot 121000-0A-00212)], 153 Pollard Road Unit #12 (Map 114, Lot 019000-02000020)], 5 White Oak Lane B-6 (Map 115, Lot 004000-0B-00014)].

Applicant and Applicant's Representatives to Request an Extension of a Lapsed Conditional Planning Board Approval for "The Landing at Loon Mountain":

- **Schorr Berman** – Managing Partner and Principal of Saber Mountain Partners, LLC, that is the developer of "The Landing At Loon Mountain" ("The Landing") and owner of

all of the unsold lots and common areas including all of the roads and the river frontage on East Branch of Pemigewasset River.

- **Frank Spinella, Esq.** – Attorney from Hall, Morse, Anderson & Spinella, PC, 14 Centre Street, Concord, NH 03301 representing Schorr Berman, Managing Partner and Principal of Saber Mountain Partners, LLC.

Abutters and Their Representatives:

- **Scott Douglas Burke, Esq.** – Attorney representing Michael and Gina Donovan from Morrison Mahoney, LLP, 250 Summer Street, Boston, MA 02210.
- **John R. (Jack) Daly** – abutter, resident and a principal owner of 186 Black Mountain (Tax Map 130, Lot 097) in “The Landing” owned by John R. & Donna M. Daly, 186 Black Mountain Road, PO Box 450, Lincoln, NH 03251-0450.
- **Michael G. Donovan** – a principal owner of 132A Woodland Loop (Tax Map 114, Lot 046000-02-00017) and 23 Back Forty Road (Tax Map 132, Lot 039) both owned by Michael G. & Gina A. Donovan, 25 Hardwick Road, Ashland, MA 01721.
- **Brenton (Brent) W. Drouin** – abutter and resident of 2 Hay Hill (Tax Map 132, Lot 058) in “The Landing” owned by Brenton W. Drouin, PO Box 788, Lincoln, NH 03251-0788 and Owner of Century 21 Mountainside Realty, 49 Main Street, Lincoln, NH 03251.
- **Alvin (Al) H. MacQuarrie** – an abutter, resident and principal trustee of 32 Loonwood Road Unit #2 (Tax Map 130, Lot 060-05-00009) located in Beechwood II, owned by Alvin H. MacQuarrie & Joan M. MacQuarrie Trustees of Alvin H. MacQuarrie Revocable Trust, PO Box 1343, Lincoln, NH 03251-1343 and Treasurer of the Beechwood II Homeowners Association.
- **Philip (Phil) C. Rackley** – an abutter, resident and owner of 170 Black Mountain Road (Tax Map 130, Lot 099) located in Beechwood II, PO Box 23, Lincoln, NH 03251-0023 and President of the Beechwood II Homeowners Association.
- **Debby Saitow** – abutter and a resident of 3 Buck Road (Tax Map 132, Lot 016) in “The Landing” owned by Ivan Saitow Trustee, 3 Buck Road Realty Trust, PO Box 1149, Lincoln, NH 03249-1149.
- **Ivan Saitow** – abutter and a resident and principal trustee for 3 Buck Road (Tax Map 132, Lot 016) in “The Landing” owned by Ivan Saitow Trustee, Three Buck Road Realty Trust, PO Box 1149, Lincoln, NH 03249-1149.

Members of the General Public:

- **Tyler Clark** - resident of LaBrecque Street, Lincoln, NH.
- **Mary Conn** – resident and co-owner with David Beaudin of 10 Louis Lane (Tax Map 116, Lot 004), Lincoln, NH 03251-0245, town employee and Lincoln Water Plant Operator.
- **David Beaudin** – resident and co-owner with Mary Conn of 10 Louis Lane (Tax Map 116, Lot 004), Lincoln, NH 03251-0245, town employee and Lincoln Water Plant Operator.
- **Paul J. Beaudin II** – resident and property owner of 2 Louis Lane, Lincoln, NH 03251 (Map 117, Lot 069), PO Box 872, Lincoln, NH 03251-0872.
- **Tamra Ham** – resident of 98 US Route 3, Lincoln, NH 03251 (Map 109, Lot 002) owned by Jonathan Ham, 98 US Route 3, Lincoln, NH 03251.

- **Patricia McTeague** – resident and property owner of 51 School Street, Lincoln, NH 03251 (Map 113, Lot 113), PO Box 2, Lincoln, NH 03251-0002, member of Board of Selectmen.
- **Chris Thomas** - ?

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

Meeting was called to order at 6:02 PM

- *Callum Grant was excused.*
- *R. Patrick Romprey stepped down for the Carla J. Romprey Trustee of Carla J. Romprey March 1998 Revocable Trust conceptual and application to amend zoning.*
- *Ron Beard was seated.*

- II. **CONSIDERATION** of meeting minutes from:
- January 13, 2016

Motion to approve Minutes of January 13, 2016 with four (4) grammatical changes.

Motion: Paula Strickon Second: John Hettinger

All in Favor: (5,0)

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

A. **6:00 PM – Conceptual - Carla J. Romprey Trustee of Carla J. Romprey March 1998 Revocable Trust**

Presentation of Conceptual:

Pat Romprey explained the Conceptual to the Planning Board and handed out a rough plan for a possible layout for workforce housing. Romprey said that the plan he had drawn was a “worst case scenario”. Romprey said that the drawing represents what the potential purchasers would like to do with the property. Romprey said that the drawing is a generic concept for workforce or affordable housing. Romprey said what the potential purchasers are thinking about is essentially an affordable layout to create affordable housing. He is looking for the Planning Board’s approval of the concept, nothing else. All issues associated with density, setbacks and so forth will be handled through the Site Plan Review process or through the Zoning Board of Appeals in a request for a variance.

Hettinger said that Romprey’s drawing showed five (5) structures on the plan as a possibility and asked if there was a possibility of eight (8) or more structures.

Romprey said, “No”. The plan showed five (5) structures and would house a total of forty (40) units. Romprey thought that in reality there would probably never be more than twenty (20) units. Romprey said that the plan showed a “worst case scenario”. These numbers are arbitrary and the actual number proposed would be settled in a Site Plan Review. The plan was only to show what could be done on the property.

Strickon asked about access.

Romprey said that the current access would be from Louann Lane and that there was a possibility that one means of access would be on Main Street but that a Main Street access did not exist at this time. Romprey again said that they were only asking for approval of the concept, nothing else.

Hettinger asked how many stories there would be in each of the buildings.

Romprey said, “Two”. Romprey added that in all cases for these buildings there would be a fire lane around the rear so there would be at least twenty feet (20’) from the structure to the boundary lines at a minimum.

Robinson said that although this is only a conceptual, does the use and the dimensions of this proposed project as presented in this conceptual meet the General Use (GU) zone requirements or only the Village Center (VC) requirements.

Romprey said that you could make the argument for workforce housing as an allowable use under both zoning districts, but the density would be more allowable under the Village Center (VC) District. The setbacks would be the same regardless of which zoning district the lot is in because the buildings would have to have a fire lane. Romprey presented this conceptual plan to reflect a worst case scenario of what possibly could happen which is forty (40) dwelling units. In reality it would probably be twenty (20) units so these buildings would be half this size.

Hettinger asked if there would be forty (40) cars parked on the property. Romprey said that it was not likely that there would be forty (40) cars. If there were forty (40) units it was possible but Romprey did not want to see that happen.

Hettinger said that the purchasers would have to put a parking lot in as well.

Romprey said that the copy of the plan was hard to read because it did not copy well but the parking area was shown on the plan.

Taylor Beaudin asked if Romprey meant that the anticipated project is for half the size shown on the conceptual plan, does that mean half the number of buildings or would the buildings themselves be half the size as shown on the plan.

Romprey said, “No” the number of buildings would stay the same, but the buildings would be smaller. The buildings on the plan reflect forty (40) units, but in reality the buildings would be smaller. Romprey said that smaller buildings would probably be more in line with reality.

Robinson said that the description of the plan reads “Affordable Housing Complex” and asked if the units would be rental apartments or could these units be sold as individual condos.

Romprey said that would be up to the developer. Romprey said he does not know what the developer would want to do. Romprey said that his main concern was that this concept was in the Master Plan. Workforce Housing has been shown by the surveys submitted in connection with updating the Master Plan as being seriously needed in Lincoln. Romprey said that several people have come forward to say that they believe the location is ideal for this concept because it is within walking distance to Main Street.

Town Manager/Planner Burbank said that the Planning Board should keep in mind that Romprey is talking about two terms, “Workforce Housing” and “Affordable Housing” noting they are different concepts. The difference mostly relates to the type of funding that the project would receive.

Hettinger asked if this would be like a Lincoln Green type of complex (i.e., elderly and disabled housing).

Romprey said that there would be some similarities, but the dwelling units would be individual apartments, some are two (2) bedroom units and some are three (3) bedroom units. The point of the project is to give people access to housing who have families and who cannot find a place to stay in the area in order to work in the area. Some of the apartments are one thousand one hundred (1,100) square feet and some are nine hundred ninety-two (992) square feet.

Chair Spanos made an effort to poll the Planning Board members to see if they positively viewed the concept and if the concept for the project was something that Romprey’s potential buyer should move forward with.

Strickon questioned what Chair Spanos meant when he asked whether members of the Planning Board approved the concept.

Chair Spanos said that he was asking only about the concept and the question is: is this the type of project the Town needs.

Hettinger said that the concept would have to go through the Planning Board’s Site Plan Review process. Romprey said that everything related to the proposed project is subject to Site Plan Review.

Strickon said that she heard Romprey say there will be access to Main Street. She asked him where the access would be. Romprey said he did not know yet. Romprey said that access to Main Street has not been negotiated and would be an issue for Site Plan Review.

Hettinger said that the Site Plan Review would take place in public session and the Planning Board would need input from the abutters.

Robinson said that Workforce Housing will be one of the major components of the updated Master Plan. Currently, although the commercial space and employment base in Town is increasing, we are squeezing out affordable places for the workforce to live. Robinson said that a Workforce Housing project like the one proposed by Romprey fits in with what the Planning

Board is looking to encourage after spending hours and hours redoing the Town's Master Plan. Robinson said that this proposed project fits in with the theme of having more of that affordable housing versus the luxury condos in Town so that people who work for businesses in Town can afford to live in town.

Robinson said that conceptually, he believes that a Workforce Housing project is doable and is a decent use of that land. The idea that there will be twenty foot (20') boundary from any abutters is a positive thing. Robinson reminded the Board that this proposal is only a "Conceptual"; a developer could come back with a different plan. Robinson said that a Workforce Housing project meets the goal of the Master Plan to supply this type of this type of housing in Lincoln. Based on the community's response to the surveys, the Town wants Workforce Housing and the Town needs Workforce Housing, yet there has been no major thrust in that direction. This proposed project would supply that thrust.

Robinson also said he thinks there needs to be a reasonable density in that area because the land is not on Main Street; it is a block back from Main Street. The lot(s) do encroach into the residential neighborhood. Even without changing the zone something like a Workforce Housing project would be permitted as a General Use (GU) District anyway. Conceptually, Robinson believes Workforce Housing on these lots is a good idea.

Belanger said that the surveys indicated that the Town is in need of affordable housing for a sustained workforce. Belanger agrees with Robinson.

Chair Spanos asked members of the Planning Board if they agreed with this conceptual proposal.

Hettinger said he agrees as long as:

- The project is reviewed by the Planning Board properly; and
- The Planning Board reviews the architecture of the buildings; Hettinger said he thinks that the architecture of the buildings should be consistent with the other properties that are there and should not devalue any of the abutting properties.

Chair Spanos said to let the minutes reflect that the Planning Board looked favorably upon this concept for Workforce Housing.

B. 6:00 PM – Continued Public Hearing for Proposed Amendment to Land Use Plan Ordinance conducted on Wed 1/27/2016 at 6PM – continued from January 13, 2016.

Proposed zoning amendment to LUPO per Petition to Board of Selectmen:

- 1) Change the Zoning District Designation in Land Use Plan Ordinance from General Use (GU) District to Village Center (VC) District for 2 lots:
 - a. 30 O'Brien Avenue (Tax Map 117, Lots025) owned by Carla J. Romprey Trustee of Carla J. Romprey March 1998 Revocable Trust; and

- b. 31 O'Brien Avenue (Tax Map 117, Lot 019) ½ undivided interest owned by Carla J. Romprey Trustee of Carla J. Romprey March 1998 Revocable Trust as a tenant in common with Diane Caras who also owns a ½ undivided interest as a tenant in common.

Chair Spanos said that the Notice for a Public Hearing on a proposed zoning amendment to the Land Use Plan Ordinance says the hearing is per petition to the Board of Selectmen. The petition to the Board of Selectmen failed because the petitioners did not gather enough signatures of Lincoln registered voters (i.e., 25 registered voters). Consequently, the Planning Board is here to decide whether the Board is going to vote to place it on the warrant per the applicant's request. At the last meeting the Planning Board voted to place the request on the warrant without a recommendation. There was some confusion so the Planning Board took a vote to reconsider their vote later at that same meeting on January 13, 2016.

Romprey said that he understood that this matter was closed at the last meeting. Chair Spanos said that was correct.

Romprey said, "Based on my understanding I would like to reserve for the record, my objection to the hearing being reopened until I can confer with my counsel." Chair Spanos said, "So noted."

Chair Spanos said that in the past, generally the Planning Board usually would place this type of request on the warrant as a courtesy to the applicant. However, he now understands that apparently the Planning Board has to make a decision on whether the Planning Board wants to move the proposed article forward with the recommendation or the Planning Board has to recommend that the proposed article will not be placed on the warrant.

Hettinger said he was the member of the Planning Board who was primarily opposed to the change in the Zoning District Designation. Hettinger said he was opposed because there were several dozen abutters at the last meeting and not one of the abutters was in favor of the change so Hettinger said he would have to vote "nay". Hettinger explained that where the abutters are directly impacted by the change and if the Planning Board voted to put the article on the warrant, then others in Town who are not abutters and who would not have the same sensitivity to the issues and would not be impacted by the change would be voting on the change. Hettinger said that this fact alone makes him tend to support the abutters' position.

Attorney Malia said that he wants to make sure the members of the Planning Board understand what they are voting on. Their discussion involved a proposed warrant article to amend the zoning ordinance. The proposed warrant article was submitted to the town in two different ways:

- Submitted directly to the Planning Board by the Romprey's; and
- Also submitted to the Town (Board of Selectmen) by petition.

Attorney Malia said that since the last Planning Board meeting (January 13, 2016), a closer examination of the folks who signed the petition has revealed that not all of them were registered

voters in the Town of Lincoln. The petition fell short. So that petition warrant article is no longer valid; it cannot to be placed on the warrant.

Chair Spanos said the petitioned warrant article was never officially turned over by the Board of Selectmen to the Planning Board for consideration.

Attorney Malia said the only article the Planning Board is dealing with is an article that was presented to the Board by the Rompreys, asking the Planning Board to put it on the warrant as a Planning Board warrant article.

Attorney Malia said that just because the Rompreys brought a petitioned warrant article to the Planning Board asking to amend the zoning ordinance (Land Use Plan Ordinance) without the requisite number of registered voter signatures on it, does not mean that the Planning Board has to put it on the warrant, unless they vote to do so. If the petitioned warrant article had had the required number of signatures, then the proposed warrant article would have to go on the warrant, but it did not.

Attorney Malia recommended, first, the Planning Board should vote to put the article on the warrant and then, vote to recommend or not recommend it:

- First make a motion to place the article on the warrant
 - Vote as a Planning Board on that motion; at that time do not vote to recommend or not recommend, but just to have the article placed on the warrant.
- Second, if that motion is seconded and approved then somebody should make a motion to approve the warrant article.
 - If the motion to place the article on the warrant fails, then the article does not go on the warrant.
 - If the motion to place the article on the warrant passes then the Planning Board's next motion will be to approve it and see how many of you are in favor of approving it or not approving it.
 - And then the recommendation will be placed on the article by the Planning Board to recommend or not recommend.

Paul Beaudin tried to ask a question. Chair Spanos told the audience that the Planning Board was not taking public comment at this time.

Paul Beaudin said that he had a question for Town Counsel about this process. Chair Spanos said, "No, not right now. We are not taking any public input. We took public comment at the last meeting and right now we have not decided to open up to public comment".

Robinson said that at the last meeting (January 13, 2016) he brought up his concerns with the proposed change of the zoning district designation. Robinson said:

- Allowed uses as the Village Center (VC) District are a positive change for that piece of land. The change in the zoning district designation eliminates a lot of things that Robinson personally does not think belong there, so it narrows down the scope of what is allowed;

- **Front Set Back** that gets reduced is not an issue because whatever gets developed there brings it closer to Main Street which is where it belongs, farther away from the back side;
- Robinson's two primary concerns were:
 - **Density**; and
 - **Setbacks** - Reduction in setbacks from the side lots.

Those are the two changes that he sees as significant between General Use (GU) District and Village Center (VC) District. Robinson wanted to see if Romprey wanted to respond to that because he brought that up in public and asked Romprey if that was a legitimate concern.

Density & Setbacks: Romprey said that he addressed the issues of density and setbacks earlier during the hearing, but would reiterate it. There needs to be a "fire lane" or a "fire apparatus access road" so that fire safety vehicles can access the buildings from behind. Romprey said that he believes that the Fire Code requires twenty feet (20') feet for a "fire lane" at a minimum.

General Requirements for Fire Lanes and Access Paths (an excerpt only):

Fire Lanes and the access to Fire Lanes shall consist of a travel surface a minimum of twenty (20) feet in width, plus an area between the travel surface and the structure to be protected, referred to herein as the "building band".

NFPA - National Fire Protection Association

Robinson said that if that is the case, then the only difference for Romprey as a developer (or whomever purchases the property as a developer) between designating the lot as being in the Village Center (VC) District versus the General Use (GU) District is the maximum lot coverage which is the difference between seventy percent (70%) and eighty percent (80%). Romprey agreed; lot coverage would be determined by the Planning Board in the Site Plan Review process. The Planning Board could come back and tell the developer he can only do fifteen (15) dwelling units or up to twenty-five (25) dwelling units. The allowable maximum density is totally subject to review by the Planning Board or the Zoning Board of Appeals (ZBA). What Romprey has turned in is simply a "concept".

Romprey said that he is aware that the abutters have concerns and he understands those concerns, however, everything he is proposing is in the Master Plan and "spelled out as needed". Even if the Planning Board voted to change from the zoning district designation from General Use (GU) District to the Village Center (VC) District, the project would still be governed by Planning Board action. The project still would have to go through a full blown Site Plan Review. Romprey said that he thinks a lot of those abutter concerns should now be gone.

Attorney Malia addressed the Planning Board:

- The Planning Board is here because a motion to reconsider was made and seconded and approved on January 13, 2016. The Planning Board does not have to reopen the public hearing, but they can reopen the public hearing if they want to.

Beard said that it appears that a number of people would like to be heard. Chair Spanos polled the members of the Planning Board and the members agreed to reopen the public hearing.

Motion to open public hearing.**Motion: OJ Robinson****Second: John Hettinger****All in favor: (5-0)****Paul Beaudin re: Questions about Process:**

Paul Beaudin had questions about the process that he wanted clarified by the Town Attorney. “If the Planning Board takes a vote to put this on the warrant for the March meeting, isn’t that, in and of itself, a recommendation by the Planning Board?” Beaudin said that he thought that the only way the Planning Board could recommend or not recommend a warrant article was on a submitted petition. Beaudin asked whether the Planning Board was going to recommend or not recommend putting something on the warrant. “Aren’t they kind of doing that by virtue recommending to put it on? To clarify a little more, I think when the voters go to the ballot box and they go to check it off, if they see that the Planning Board has put that article on there, they are going to assume that the Planning Board is in favor of it just by the fact that they put it on there.”

Attorney Malia said that he did not think so. The second motion would be to recommend the warrant article and that motion would pass or fail. Attorney Malia said that either:

- There will not be anything on the warrant; or
- On the warrant it will indicate that the article was placed on the warrant by the Planning Board and at the end of the article it will say “Recommended by the Planning Board” or “Not Recommended by the Planning Board”, depending on the results of the Planning Board’s vote.

Town Manager/Planner Burbank asked Beaudin if he was worried about the warrant article being silent; that there was only an article on the warrant with no recommendation from the Planning Board either way.

Beaudin said that he thinks that “...a lot of people will realize or hear in the street that the Planning Board supported this going on the warrant and they are going to say that the Planning Board supported this and will not realize all the affects it has on the abutters. Word is going to get around. The people are going to know that the Planning Board made that decision. And it’s in the minutes, so they are going to think that the Planning Board is in support of the article.” Beaudin is just concerned with “the people’s” interpretation of what the Town Attorney is saying.

Attorney Malia addressed the Planning Board:

- The Planning Board members are going to first vote as to whether or not they want to put the article on the warrant.
- Then the Planning Board will vote as to whether or not they want to recommend it.

Wayne Wright:

Wright asked if the proposed warrant article should even be considered since less than the required number of signatures were obtained. Chair Spanos said that requirement of twenty-five (25) voter signatures only pertains to the petition and the petition is dead. The Planning Board is not acting upon the petition. The applicant also submitted her request directly to the Planning Board asking for the Planning Board's recommendation.

Paul Beaudin re: Questions About Notice:

Paul Beaudin said that the meeting was noticed both ways, to discuss both the petition and the warrant article. Beaudin asked how the Planning Board could be meeting to discuss the article to be put on the warrant as a Planning Board article. Chair Spanos said that the meeting was noticed both ways as a continuation of the hearing of January 13, 2016 and as the petition.

Beaudin said in the letter that was sent says:

“The purpose of this letter is to notify you that the Planning Board will meet and will be voting on whether to recommend the petitioned warrant article because that was not accomplished at the January 13, 2016 meeting. The vote will be held as follows:”

The public notice that was sent out to people who are here, said that this meeting was going to be to consider the petitioned warrant article. The petitioned warrant article was invalidated because of the lack of registered voter signatures on it. The Planning Board probably would not have considered the petition had it been submitted to the Board of Selectmen and then gone to the Town Clerk to validate [the signatures]. “You probably would not have had that anyway. In Beaudin's opinion, the Planning Board meeting was noticed wrong. “If that is the case this meeting is really kind of not happening, is it?”

Attorney Malia said that although technically Beaudin may be correct, he would disagree that the meeting is not happening. Although there may be a technical problem with notice, maybe they had not discovered that the signatures fell short before the notice was sent out. Even if they had, certainly the notice puts everyone on notice that the proposed zoning amendment is going to be discussed tonight. “I think that if someone were to challenge the vote being taken tonight because of the word ‘petition’ being in the notice, my opinion would be that that challenge would be unsuccessful, but that somebody could do it if they wanted to.”

Applicant's Representative Pat Romprey:

Romprey said that there was never a petition submitted to the Planning Board. The petition was submitted to the Board of Selectmen only. He does not know how the petition was brought into these Planning Board hearings. It was not at Romprey's request.

Romprey asked the Planning Board members to allow him to bring to their attention a couple of matters before they vote on this proposed warrant article:

- There has never been a petition put in front of the Planning Board to change zones that has not been put favorably in the ballot. There are five of them that he knows of.
- The proposed Workforce Housing project totally conforms with and is supported by the Master Plan so it should be put on the ballot favorably.

Karin Martel:

Karin Martel said that she and her husband are abutters. The whole focus of their property is facing in the direction of the subject lots. She was very surprised to learn that that originally the zoning district designation for those two lots had been changed from Rural Residential (RR) District to the General Use (GU) District (aka “commercial”). K. Martel said she never heard anything about the change from her father who was an abutter at the time. She looked through her deeds. At the last meeting the Planning Board asked what the original intent of those lots was. The intent of that property was Rural Residential (RR) from way back. She is alarmed at what Romprey is trying to do.

Chair Spanos said that the zoning district designation for the lots were changed by the Zoning Board of Appeals to correct an administrative error. The Planning Board had nothing to do with the zoning change.

Karin Martel asked how to research that zoning change. Chair Spanos said that it was all public information. He recommended that Karin Martel come down to the Town Hall and ask Carole Bont to help her. *Bont gave Martel a copy of the packet with the history of the subject lots.*

Tanya Patterson:

Tanya Patterson said that in the prior conversation, the Planning Board stated that Romprey’s conceptual plan for Workforce Housing was “a go” within the General Use (GU) District and that the Workforce Housing project is in accordance with the Master Plan. And Romprey’s entire project as presented in his conceptual plan is subject to Site Plan Review. Patterson said that if Romprey’s proposed project was to go through, the people at the meeting still do not know any of the particulars; as Romprey stated, it could be two (2) structures or it could be five (5) structures. It is all “conceptual”, so no one really knows.

Patterson said that if the zoning district designation for the two subject lots were put into the Village Center (VC) District the neighborhood would have sidewalks. But as it is right now her neighborhood does not even have sidewalks that are plowed on Maple Street. Patterson said there was just “an accident” (January 23, 2016) and the sidewalk was not plowed further up the road. People who live in her neighborhood also have kids. The shortest distance for the kids to go to the school is the hypotenuse which everyone knows is O’Brien Avenue on the western side or the southern side. Her thought is that instead of putting the cart before the horse, while a Workforce Housing project is already approved conceptually in the General Use (GU) District, that the zoning district designation of these two lots stay under General Use (GU) District until an adequate Site Plan Review is proposed. Then this whole discussion about changing the zoning district designation could happen. Right now there are too many hanging threads and it does not make sense to change the zoning district designation now.

Myles Moran:

Myles Moran said that the Planning Board and the audience were here to continue a meeting that the Planning Board did not finish up. “Now a ‘Conceptual’ gets thrown on the table. What notice was given for a ‘Conceptual’?” Chair Spanos said that the Planning Board and the applicants are not required to notice abutters for a “Conceptual”.

Moran asked if someone could walk in the day before a meeting and say “I want to have a Conceptual” and as long as the ‘Conceptual’ was on the agenda they would be “good to go”. Bont said that a “Conceptual” does not require any notice at all.

Moran asked Chair Spanos if he was personally involved in carrying that petition to gather signatures for the petition that was nullified. Chair Spanos said that the Selectmen’s petition was never turned into the Planning Board. Chair Spanos said that the hearing is not on the petition so members of the Planning Board cannot answer questions relative to the petition.

Moran said he felt there was a conflict of interest. Attorney Malia said that he could not answer that, but if anyone has a conflict of interest on the Planning Board they should recuse themselves from any vote on which they have a conflict of interest.

Moran said he thought Chair Spanos had a conflict of interest in that he sells property for the applicant. Applicant Romprey took exception to Mr. Moran’s comments. Chair Spanos said he was not answering any questions relative to the petition.

Motion to close public hearing.**Motion: John Hettinger Second: Paula Strickon****All in Favor: (5-0)****Motion to place the article on the warrant.****Motion: OJ Robinson Not seconded****Motion fails.****The article will not be placed on the warrant.***Romprey is reseated.**Beard is recused.***C. 6:00 PM Continued Public Hearing on an Application to Extend a Conditional Planning Board Approval for “The Landing at Loon Mountain” – continued from December 22, 2015.****Applicant/Property Owner:**

Schorr Berman d/b/a
Saber Mountain Partners, LLC
PO Box 820
Lincoln, NH 03251-0820

Property of “The Landing at Loon Mountain”: Tax Map 130, Lots 062-085; Tax Map 131, Lots 002-055; Tax Map 133, Lots 041-044. Tax Map 133, Lot 044 includes the following roads: Back Forty Road, Black Mountain Road, Buck Road, Hay Hill Road, Landing Road and Wanigan Road.

- Lots located in the Rural Residential (RR) District: Tax Map 130, Lots 062-067; Tax Map 131, Lots 002- 032, 034-052; Tax Map 133, Lots 041-044. Tax Map 133, Lot 44 includes the following roads in the Rural Residential (RR) District: Back Forty Road (a portion), Black Mountain Road (a portion), Buck Road, Hay Hill Road (a portion), Landing Road (a portion) & Wanigan Road.
- Lots located in the Mountain Residential (MR) District: Tax Map 130, Lots 068-085, Tax Map 131, Lots 033, 053-055; Tax Map 133, Lot 44 includes the following roads in the Mountain Residential (MR) District: Back Forty Road (a portion), Black Mountain Road (a portion), Hay Hill Road (a portion), and Landing Road (a portion).
 - Eleven (11) lots have been sold and have houses built on the lot:
Map 130, Lot 063, 075, 085
Map 132, Lot 013, 015, 016, 017, 031, 032, 056, 058
 - Nine (9) lots have been sold, but no houses have been built on the lots yet.
Map 130, Lot 068, 074, 076
Map 132, Lot 008, 011, 012, 014, 018, 039

Background: The development known as “The Landing at Loon Mountain” was developed and originally owned in its entirety by Saber Mountain Partners, LLC, PO Box 820, Lincoln, NH 03251-0820. (Principal: Schorr Berman). The original PB approval was granted at the PB meeting on April 27, 2005, with a Notice of Decision of the Conditional Approval dated May 26, 2005. The Subdivision/Site Plan Review approval was modified on April 10, 2013, to accommodate hammerhead turnarounds instead of cul-de-sacs at the end of two roads. The revised approval expired on April 10, 2015. The Letter of Credit for Black Mountain Road, reduced from \$250,000 to \$100,000, expired on January 12, 2015. On December 22, 2015, the Planning Board found Saber Mountain Partners, LLC, to be not in compliance.

For the Public Hearing, the PB will hold a public hearing to determine whether or not to approve the Applicant’s Application to Extend Planning Board Approval of Site Plan Review (SPR) on the formerly approved, now expired, plan for Site Plan Review (SPR). Upon a finding by the Board that the application meets the submission requirements of the Land Use Plan Ordinance and Site Plan Review Regulations, the Board will vote to accept the application as complete, and, if the Planning Board finds the application to be complete, then a public hearing on the merits of the proposal will follow immediately. Interested parties are invited to attend, in person, or by agent, to show why the developer’s request for an extension should or should not be granted. Should a decision not be reached at the public hearing, this application will stay on the Planning Board agenda until such time as it is either approved or disapproved.

Applicant’s Attorney’s Presentation:

Attorney Spinella appearing on behalf of Saber Mountain Partners, LLC, asked if the Planning Board had a copy of his letter dated January 15, 2016. It had. (See Appendix A.)

Attorney Spinella said that at the last meeting, the Planning Board asked his client to address certain matters. Attorney Spinella said that he wrote the letter dated January 15, 2016, for his client to support his client's request for an extension; he tried to address those items in the letter. Attorney Spinella said he wanted to start his presentation where he ended his letter of January 15, 2016.

Attorney Spinella said that one of the Planning Board's requests was to confirm the typical road cross section that was provided to the Planning Board as applicable to the portion of Black Mountain Road located outside of "The Landing at Loon Mountain" ("The Landing"). Most of the January 15, 2016, letter addressed that issue.

Attorney Spinella said that back in April of 2005 when the matter was first discussed (and it was discussed at length at that time), there was a sentiment from some at the Planning Board meeting that the Planning Board should require the developer to bring the whole of Black Mountain Road up to the Town's road standards. There was a sentiment the other way too. In fact, the then Chairman Romprey made a point of noting that it would be unreasonable to require Saber Mountain Partners to bring the whole of Black Mountain Road up to Town standards. The tenor of the meeting was reflected in the minutes. The Planning Board said that the fair thing to do would be to require Saber Mountain Partners to repair whatever damage was done to the road during the development process; that the developer should pave and shim, because there would be some effect on the road during the development process.

Attorney Spinella said that a letter was sent by Saber Mountain Partners later that year and the letter contained the typical road cross section. The typical road cross section is not in itself a model of clarity as to what would and what would not be required. Attorney Spinella said that in his letter he tried to convey the sense and the tenor of the April 2005 Planning Board meeting.

Attorney Spinella said that it was his client's position (and he thinks that his client's position was a reasonable position) that in April of 2005 the Planning Board discussed having Saber Mountain Partners bring Black Mountain Road back up to the condition "to where it was found". If damage is done it should be repaired. However, Attorney Spinella said that with respect to requiring additional drainage measures and bringing the road above the standard that it was found, was really against the tenor of the April 2005 meeting as described in the minutes.

Attorney Spinella said requiring additional drainage measures and bringing the road above the standard that it was found was also contrary to the bonding requirement that the Planning Board placed on Saber Mountain Partners at that time. At the time there was a two hundred fifty thousand dollar (\$250,000) bond required for the entire section of Black Mountain Road under discussion at that point. When the upper section of Black Mountain Road was shimmed and paved, that two hundred fifty thousand dollar (\$250,000) bond was reduced to one hundred thousand dollars (\$100,000). The amount of one hundred thousand dollars (\$100,000) is an amount that covers the shimming and paving, not additional drainage measures that might otherwise have been required.

Attorney Spinella said that in his view, the typical road cross section shows, in fact, that the Planning Board's intent was to require only shimming and paving, not taking additional drainage measures. Attorney Spinella also pointed out that whatever this Board would require at this point or back then, now is clearly only applicable to a portion of Black Mountain Road because of the correction made by the Board in January of 2013. According to the January 2013 Planning Board minutes, there was an administrative error that was corrected at that time. Attorney Spinella read from the January 2013 minutes:

"It is the determination of the Planning Board that Black Mountain Road as described in the April 27, 2005, minutes begins at the end of the Mountain Club parking lot and terminates at the property line at the landings and does not include the upper portion of Black Mountain Road."

Attorney Spinella said, "So whatever the requirement is or should be, it is applicable. We now know to that section as described in the January 9, 2013 minutes. What we are asking is to have the sense of the 2005 minutes brought to fruition. There has never been a discussion of increasing the drainage measures on the road at any time since 2005 and at every Planning Board meeting since 2005 there has never been a discussion about increasing the bond. Indeed it was reduced in recognition that the upper section was shimmed and paved. So we think that the Board should at this point stick to its guns as to the sense and tenor that has been in place for now more than ten years. My client is prepared to do the shimming and paving, is prepared to replenish that \$100,000 bond which would cover the cost of it. We are prepared to do that forthwith in the spring and we think that the Board should accept that as in compliance for purposes of extending the application. Before I turn to other items can I field questions on this one?"

Which Typical Road Cross Section Applies? What Can Be Bonded? Did the Town Waive its Right to Request a Performance Bond?

Vice Chair Romprey asked Attorney Spinella if he was referring to a particular 2005 letter and if so, which letter was he referring to because there were several. Attorney Spinella said he was referring to the letter dated July 28, 2007, from Mr. Sabourin at Black Mountain. Attorney Spinella said he referenced the letter from July 28, 2007, on page 6 of his letter dated January 15, 2016; it is the letter that included the typical road cross section as an exhibit.

Attorney Spinella said there was a discussion at the December 22, 2015, meeting "about the bonding of requirements or a performance guarantee of the exclusion of the roads into 'The Landing' beyond the four (4) season stream". Attorney Spinella said "Right now that has not been touched. Nor if you recall there was a discussion about placing temporary turnarounds until such time as there was development and the hammerheads would go in at the end of the roads. I point out in my letter, and do not want to belabor the point that, in fact, there has been no requirement to date to bond any obligations with respect to completion of those sections of the roads. No security or no bond was ever furnished in 2005 or since. And for ten plus years that is the way it has gone. It is my client's position that as a result of that, any bond requirement has been waived as a matter of law. But it is not our hope to get into an argument or a dispute,

certainly not a court battle over waiver because we think that the Board should simply rely on the fact that, at this point in time, security is unnecessary.”

Chair Spanos asked the Town Attorney Peter Malia whether he thought that the Planning Board had given Saber Mountain Partners a waiver on the performance bond. Attorney Malia said that he did not want to take a position in public on that. Attorney Malia said that “waiver due to laches” is a legitimate legal argument. With regard to “waiving a right due to laches”, the Board can “waive its rights due to laches” which means the Planning Board can waive its right to enforce something after a certain number of years of failing to enforce it. The Town can also lose its right to enforce something through inaction or laches for not enforcing its right. These are legitimate legal arguments but Attorney Malia said he would rather not take a position on the arguments in public.

Laches: *n.* The legal doctrine that a legal right or claim will not be enforced or allowed if a long delay in asserting the right or claim has prejudiced the adverse party (hurt the opponent) as a sort of “legal ambush.” The defense of laches is often raised in the list of “affirmative defenses” in answers filed by defendants, but is seldom applied by the courts. Laches is not to be confused with the “statute of limitations,” which sets specific periods to file a lawsuit for types of claims (negligence, breach of contract, fraud, etc.).

<http://dictionary.law.com>

Vice Chair Romprey asked Attorney Spinella if the applicant would now **not** be willing to post that bond if asked.

Attorney Spinella said that was right. His client, the applicant, feels a bond is unnecessary. The original idea was that it was security in lieu of completion. Right now much of the roadway has already been completed. The utilities and the infrastructure work are there up to the point where the road now ends at the four (4) season stream.

Vice-Chair Romprey asked Attorney Spinella what he and his clients feel is the value of the remaining infrastructure yet to be completed. Attorney Spinella said that he does not know. He could estimate but he is hesitant to do that on the record. Attorney Spinella said that in the spring his client was prepared to:

- Put the temporary turnarounds in; and
- Put the two (2) ten thousand (10,000) gallon cisterns in to satisfy the Fire Chief’s issues.

Attorney Spinella asked, “What would be the purpose of requiring the bond for the remaining portions of the road at this point when, in fact, we are not ready to develop that at this point? Attorney Spinella said, “There may be a time when we do but that time is not this time. The Board has the authority under the statute to grant a waiver anyway if it finds that strict conformity would impose unnecessary hardship. And there are specific circumstances for doing so and we think that is the case. We are requesting that the Board not impose any performance bond requirement at this time. If the day arrives when construction is going to proceed for the remaining portions of the road, well that would be the time to revisit the issue but that time as I say is not today.”

Which Typical Road Cross Section Applies?

Strickon asked about the July 28, 2005, drawing (pointing to the cross section of the road) that was received as an attachment to a copy of Attorney Spinella's letter. Strickon said that she is also in receipt of a copy of a document that was received by the Town from Horizons Engineering on December 17, 2015 (dated March of 2005) that shows a much more detailed road cross section. The drawing lists Black Mountain Road, East Branch Drive, North Peak Drive, Coolidge View Drive and Star Ridge Drive and it also shows road depth. The July 28, 2005 diagram shows no depth. The March 2005 one does. It seems to be much more detailed.

Schorr Berman said that those names on the March 2005 drawing were the old names for roads at "The Landing". The new names for those same roads are "Landing Road" and "Back Forty Road". So if that drawing says "Black Mountain Road" it is Black Mountain Road as it used to be named through "The Landing". It is not the Black Mountain Road that is outside "The Landing". Berman agreed that it was clearly confusing.

Does the Applicant Have An Obligation to Address Drainage?

Taylor Beaudin also asked about the road cross section that was attached to Attorney Spinella's January 2016 letter. Taylor Beaudin read: "Proposed shim pavement and one inch (1") wearing course (Type D)" Taylor Beaudin asked if this road had any drainage in it as it currently stands; the cross section also shows "6" perforated HDPE underdrain in areas of high groundwater. Taylor Beaudin then asked if the applicant was going to do that where the high groundwater was.

Attorney Spinella said "They are not requiring it. That is a question for Steve LaFrance of Horizon Engineering to answer and Mr. LaFrance was unable to attend this evening."

Attorney Spinella's client, Schorr Berman, said the drawing was designed to be a typical road cross section. The place on the typical road cross section that had the words "new" or "proposed" is referring to the place where it says "shimming" and "topcoat". The typical road cross section is not saying there is no drainage in place; it is saying this drawing is of a cross section of a road and this is the "new" "proposed" part of the road that Saber Mountain Partners was signing up for. Berman said that "In retrospect it is not clear and we admit that."

Performance Bond Waiver Argument:

Town Attorney Malia directed the Planning Board's attention back to Attorney Spinella's bond waiver argument. Attorney Malia said that Attorney Spinella's argument is that the Town waived the right to ask for a bond for completion of the Landing Road beyond the four (4) season stream by virtue of the fact that the bond was not posted in 2005 and for 10 years it has not been posted. In Attorney Malia's opinion, the applicant lost a lot of leverage to make that argument when Saber Mountain Partners let their approval lapse in April of 2015. So if it is important to the Planning Board to have the applicant post a bond for that work and if the applicant is saying, if you extend his approval he is not going to give you one, then probably the Planning Board's best bet would be to deny the applicant's application to extend the approval so that the applicant submits a new subdivision site plan application and then you can start the bond process over again.

Attorney Spinella said, “If we are discussing the bond on Black Mountain Road, as opposed to the completion of the other roads, they are still willing to put up a bond for Black Mountain Road; the waiver right goes to the other roads. There is no need now to impose a bond requirement when we are not about to, this year, do any work beyond the stream.”

Statement of Responsibility for Black Mountain Road:

Attorney Spinella said, “The other issues that the [Planning] Board asked last time [to] be addressed is a ‘Statement of Responsibility’ for Black Mountain Road. And I appended to the letter the Articles of Association from the Homeowners Association at Beechwood II. That is really the basis for the responsibility [for maintenance of Black Mountain Road] shifting over after two (2) years. Three (3) years after completion [of “The Landing” development] by Saber Mountain, the responsibility for the maintenance of the road would divert to the [Beechwood II] Homeowners Association.” Chair Spanos asked if he was talking about Black Mountain Road. Attorney Spinella agreed.

Chair Spanos said that the Articles of Association were signed in 1988, however, in 2005 Attorney Spinella’s client agreed to take care of Black Mountain Road.

Attorney Spinella said that Saber Mountain Partners’ obligation to maintain Black Mountain Road during the development phase “was ongoing, but not forever”. “That obligation is still present in my mind only during the development segment.”

Performance Agreement:

Attorney Spinella said, “The next item was requested to be addressed at the last meeting was the performance agreement language from the 2005 Notice of Decision; and I said on page three (3) of my letter what the agreement is today as far as Saber Mountain Partners goes. It’s agreeing to install those two (2) cisterns – ten thousand (10,000) gallon cisterns – and the temporary turnarounds that we already mentioned. Certainly we will restore Black Mountain Road after the development is finished as I addressed earlier. To reinstate the Letter of Credit for one hundred thousand dollars (\$100,000) and security for its obligations on Black Mountain Road and compliance with all the other requirements in the 2005 Notice of Decision that I have addressed in this letter, we affirm those now.”

Timetable for Completion of Project or Conditions:

Strickon asked if there was a completion date for the installation of the cisterns and the temporary turnarounds. Attorney Spinella said it would be started in the spring and hopefully completed by summer.

Strickon said that the Letter of Credit did not have to be controlled by the weather. Attorney Spinella said “It does not, but before too long goes, if the Board is going to grant the application extension and approve the development we would immediately post the bond.”

Strickon asked about the timeframe for Black Mountain Road repairs. Attorney Spinella said that once the development is complete Saber Mountain Partners will be shimming and paving. “They will continue to maintain the road during the development process and when the development is finished it will be completely shimmed and repaved.”

Hettinger asked what the definition of “the development being finished” is. Attorney Spinella said, “If the development does not proceed beyond the four (4) season stream until some years down the road that would be an additional burden on my client to continue maintenance until that is done. We are not at the point now where we will be developing beyond the stream.”

Drainage on Black Mountain Road

Vice-Chair Romprey asked Attorney Spinella if the applicant had responsibility for drainage on Black Mountain Road. Attorney Spinella said that there was no obligation imposed on his client to increase the drainage measures beyond what is there now.

Vice-Chair Romprey asked Attorney Malia if there was any documentation on that. Attorney Malia said that he did share with Attorney Spinella the Grafton County Superior Court decision from 2006 in the case of *Al MacQuarrie vs Town of Lincoln*.

Romprey asked if there was anything in the Grafton County Superior Court decision specific to drainage on Black Mountain Road.

Attorney Malia said that the Court decision talked about the typical road cross section and then the developers’ obligations to maintain and repair Black Mountain Road. The Grafton County Superior Court judge was Judge Houran. The decision talked about how some felt like the developer should be required to rebuild Black Mountain Road to town road standards. Some felt that they should just be required to shim and pave. There was a lot of talk about drainage. Ultimately it looks like Judge Houran found that the obligation to do shimming and paving would include drainage work as well. In the Notice of Decision, according to Condition number five (#5), the typical road cross section had to include drainage improvements, underdrains, shim and over paving.

Attorney Spinella said that was an interpretation of a Judge in a suit between Al MacQuarrie and the Town and would not be binding in a new lawsuit if one were brought by his client.

Attorney Malia said, “Mr. MacQuarrie was trying to get the Judge to vacate the Planning Board’s approval of development. In so doing, MacQuarrie suggested that the Planning Board was negligent in its responsibility to make sure that Black Mountain Road was taken care of properly. The Judge found that the Planning Board did do its job correctly because they balanced all of the competing interests. My reading of Judge Houran’s decision is that he felt like the Planning Board ultimately decided that drainage would be part of the Black Mountain Road improvements.”

Attorney Spinella said his client was not a party to that lawsuit, so you could say it is not binding on him. Vice-Chair Romprey said that actually Saber Mountain Partners was a party to the suit

and, therefore, was bound by the outcome; Saber Mountain Partners was a third party intervenor. After reviewing the decision more carefully, Attorney Malia said that although they did not put Saber Mountain Partners in the caption, the second paragraph of the Judge's decision does reference Saber Mountain Partners as the intervenor.

Attorney Spinella said that the question of law is, is the intervenor bound by the decision?

Attorney Malia said the Grafton County Superior Court's decision may or may not be binding on Saber Mountain Partners. Even if it is not binding on Saber Mountain Partners, it is a Judge's interpretation of the minutes and the typical road cross section presented. Attorney Malia said that he thought Judge Houran felt like the outcome was that the Planning Board required drainage in addition to shimming and paving.

Attorney Spinella said, "Mr. Romprey, as my client pointed out just a few minutes ago, we concede that this is not a model of clarity. It can be interpreted multiple ways. We are asking the Planning Board to interpret it in accordance with the tenor of the April 27, 2005, meeting where I think it is pretty clear that putting the road back to the condition it was found was proposed."

Vice-Chair Romprey said that he felt the only way these issues will get resolved is by Site Plan Review.

Hettinger asked if anybody knew exactly which conditions had not been met. Was the original Site Plan Review reviewed by a third party engineering firm or not? He remembers getting some kind of feedback from a third party engineering firm. Town Manager/Planner Burbank said that the third party engineering review was in progress, but it was never finished.

Romprey asked if Attorney Spinella had any further items to present. Attorney Spinella said, "No, I think I've addressed all the items."

Temporary Turnarounds:

Attorney Malia said that there was some talk about the temporary turnaround closest to the Donovan's property and not being in a spot that the Donovan's appreciated. Attorney Malia asked if that had moved or was it in the same spot they had talked about earlier in January.

Attorney Spinella said that his client was going to move it to a less intrusive spot with input from Horizons Engineer Steve LaFrance and Fire Chief Ron Beard, which would not be right in front of the Donovan's property.

Fire Chief Beard said that no one has talked to him about that.

Attorney Spinella said that his understanding from Engineer Steve LaFrance from Horizons Engineering is that LaFrance is going to reach out to Fire Chief Beard to try and get that new location approved. Attorney Spinella said he already told Attorney Scott Burke who is representing Michael and Gina Donovan that this temporary turnaround would be moved to a

location less offensive to them, but the new location would have to be agreed upon by Engineer Steve LaFrance from Horizons Engineering and Fire Chief Beard.

Town Manager/Planner Burbank said he has not been notified about that change so now the applicant's "goalposts have moved". Attorney Spinella said that he does not think that the goal post has moved. No motion has been made by his client's engineer Steve LaFrance to contact the Town yet and that needs to happen.

Schorr Berman apologized to Chief Beard. Berman said that Engineer Steve LaFrance did come up with a revised plan for the location of the hammerheads. The plan just moves the hammerhead down one lot so it is not using the Donovan's driveway; it is using the next lot over so it is not in front of the Donovans' home. It is exactly the same dimensions for the hammerhead; it is just located one lot further away from the stream.

Motion to open the public hearing.

Motion: Pat Romprey Second: Paula Strickon

All in Favor: (5-0)

Jack Daly, Vice President of the Beechwood II informal homeowners association:

Jack Daly, Vice President of the Beechwood II homeowners association said:

Jack Daly re: Saber Mountain Partners, LLC, is responsible for Black Mountain Road:

- The argument from Mr. Spinella really convolutes this whole issue. The Planning Board issued their decision in 2005. Now Attorney Spinella unilaterally is trying to change the Planning Board's decision.
- When Saber Mountain Partners, LLC, purchased the property from Loon Mountain Recreation Corporation. ("Loon Mountain"), they took ownership of the land known as "The Landing" and they also took over ownership and responsibility for all of the roads. As part of the whole package, in addition to the land known as "The Landing", Loon Mountain also conveyed Black Mountain Road to Saber Mountain Partners. When Loon Mountain transferred the deed to Saber Mountain Partners, the deed said that Saber Mountain Partners had the responsibility to maintain Black Mountain Road – the same as Loon Mountain had been doing for all of those years prior to the deed transfer. Before the property transfer, when Beechwood II homeowners had problems with drainage up there, Loon Mountain was up there fixing the drainage. When Beechwood II had problems with asphalt falling into disrepair, Loon Mountain was fixing it. Daly said he does not understand why Schorr Berman for Saber Mountain Partners is now saying his responsibility does not include upper Black Mountain Road. Black Mountain Road is the responsibility of the developer.
- There are two major issues here that were addressed by the Planning Board's 2005 decision:
 1. Maintenance of Black Mountain Road;
 2. Repair of Black Mountain Road at the end of the timeframe when that development called "The Landing" is completed.

Attorney Spinella is trying to confuse the two issues.

Jack Daly re: Amount of the Bond for Road Maintenance and Repairs:

- Daly said the bond was issued in 2005, through negotiations with Schorr Berman's former partner in the Saber Mountain Partners, LLC – Mike Sabourin. Attorney Spinella was not here in 2005, so he was not privy to conversations between the Beechwood II homeowners and Mike Sabourin. Schorr Berman was not present during the negotiations either. So Attorney Spinella and Schorr Berman are not talking factually. They are talking about what they think they know. What they think they know is incorrect. Mr. Sabourin agreed on behalf of Saber Mountain Partners, LLC. Mike Sabourin had Horizons Engineering's Engineer Steve LaFrance with him.
- Daly asked the Planning Board if they remembered at the last meeting (December 22, 2015) when Daly asked Engineer Steve LaFrance if LaFrance had prepared that typical road cross section drawing?" LaFrance looked at the drawing and said it was his work. That drawing was the compromise crafted because the Beechwood II homeowners had asked the Planning Board to make the developer bring Black Mountain Road up to town road standards and the Planning Board would not make the developer do that. "We shot for the moon; we didn't get to the moon. We got a compromise and we are happy with that compromise. But now the developer is saying he is not going to live up to that compromise." Mike Sabourin was Schorr Berman's partner at that time; he no longer is. When one partner ducks out of a deal, the remaining partner still has to comply with the terms of the deal. Consequently, whether the Planning Board requires Saber Mountain Partners to maintain and complete that road when "The Landing" is done is a major issue for the Beechwood II homeowners.
- Daly said the bond for Black Mountain Road in 2005 was for two hundred fifty thousand dollars (\$250,000). Today, in 2016, two hundred fifty thousand dollars (\$250,000) would not even do a portion of that road. The Beechwood II homeowners are asking the Planning Board to require the developer put up some money. The developer should get an engineer to give the Planning Board an estimate of the cost to do the work. The Planning Board should make the bond "measurable to a cost of the repair of the road". If repair of the road costs either eight hundred thousand dollars (\$800,000) or one million dollars (\$1,000,000) (which is the estimate the Beechwood II homeowners got when they talked to an engineer) then the developer should put up a one million dollar (\$1,000,000) bond.
- Daly said to the Planning Board, do not let the developer out of the requirement to post a bond. That bond "is the homeowners' savior" should the developer go belly up or leave the project; then who is going to be stuck with maintaining and repairing Black Mountain Road?
- Daly said that Attorney Spinella knows that the Beechwood II homeowners association is "not a full blown association". The homeowners' association is not registered with the Secretary of the State's Office or the Attorney General's office. How can Saber Mountain Partners turn a road over to a non-existing entity? They cannot. So if they cannot turn over a road to a non-existent entity, and they bail out, who is going to own Black Mountain Road? Whose responsibility will it be to maintain or finish the road? Will that responsibility fall to the Town? Why should the town take on a burden that is

truly the responsibility of the developer? It is not fair to anybody. It is not fair to the Beechwood II home owners. It is not fair to the residents in the rest of the town who obviously would have to pay taxes to repair and maintain those roads. Loon fulfilled its obligation. Homewood II homeowners are asking the successor owner/developer to do the same.

- Daly said in 2005 drainage was an issue; Attorney Spinella said it was not. Drainage has always been an issue and will continue to be an issue on Black Mountain Road. If you live in the mountains, there is mountain runoff. The drains have to be maintained and those who have worked up there know that. It is unimaginable that Saber Mountain Partners will not take the responsibility that they bought into. Times are tough for everybody. Times are tough for the homeowners too. The homeowners should not be burdened with the maintenance and repair of the roads. The language from the Planning Board decision from 2005 was cited by Mr. Robinson and Ms. Strickon at the last meeting; it speaks for itself.
- Daly said the Beechwood II homeowners were not given notice of the 2013 meeting when Schorr Berman, on behalf of Saber Mountain Partners, asked for a reduction in the amount of the bond; obviously the homeowners would have opposed a reduction. The bond was reduced by one hundred fifty thousand dollars (\$150,000) for forty-two thousand dollars (\$42,000) worth of work. Rines Paving, LLC did that work. Rines Paving top-coated Upper Black Mountain Road. The cost was forty-two thousand dollars (\$42,000). The bond was reduced by one hundred fifty thousand dollars (\$150,000). Daly did not know how that happened. Certainly the Beechwood II homeowners would have opposed a reduction in the amount of the bond if they had been given notice.

Saber Mountain Partners, LLC's Compromise With Beechwood II Homeowners Association re: Drainage and Typical Road Cross Section:

Robinson asked Daly to tell the Planning Board about the compromise the Beechwood II homeowners association made with Mike Sabourin for the record; define what he thought that compromise was by defining the road standards and the scope of the work.

Daly said "Rather than oppose the whole development and go on record and hold things up, Mike [Sabourin] said to us, 'Let's meet'. We met at Phil Rackley's house; he is the President of the [homeowners association] board and he is sitting over to my right. [Sabourin] indicated, 'I'll have an engineer come up with a compromise', because, as Mr. Romprey knows, the Planning Board would not approve [requiring Saber Mountain Partners] to bring [Black Mountain Road] up to the town standards. We were shooting for the moon and we didn't get there. [Sabourin] did that and said, 'We'll take care of the drainage, we'll maintain the roads from here on in'. [Sabourin] put [the compromise agreement] in writing and consequently he signed that typical road cross section or submitted it. And that was the compromise that we made and we were happy with that."

Robinson asked if Daly was speaking about the letter dated July 28, 2005 with the typical road cross section that was submitted. Daly said that was correct.

Phil Rackley said that Engineer Steve LaFrance from Horizons Engineering was also at the meeting. Engineer Steve LaFrance gave the presentation at Rackley's house that night – the one he gave a few weeks ago at the December 22, 2015 Planning Board meeting.

Cisterns for Fire Suppression:

Daly asked Chief Beard if the water in the two cisterns that exist at "The Landing" and the water in the two new cisterns that will be constructed, is public water. In other words, if there were a fire up on Black Mountain Road, would the fire department be able to access that water to fight a fire outside of "The Landing" area? Fire Chief Beard said yes.

Is Drainage Included:

Attorney Spinella read from the minutes of the April 27, 2005, Planning Board meeting which is also quoted on page 4 of Attorney Spinella's January 15, 2016 letter.

"Selectman's Representative Moore questioned if it was reasonable to expect the developer to rebuild the road to Town specifications that the road did not exist in when he purchased it. He does not believe it is. It is reasonable to require him to maintain the road to the standard he found it in, and to restore the road at the project's completion to an acceptable standard. Mr. Daly noted he agreed with Selectmen's Representative Moore's statement, but still feels a bond should be posted, as this is the sole access road used by homeowners and developers for the next 5 years. Selectmen's Representative Moore responded in his opinion, we need to require the developer to maintain and restore the road to a reasonable condition. A reasonable condition is not the Town road standard. A reasonable condition is the standard of the road when Mr. Sabourin purchased the road."

Attorney Spinella said that back in 2005, Jack Daly failed to draw a distinction between restoring the road and improving the road. Has Daly changed his mind in the last ten years?

Strickon said that on page 5 of Attorney Spinella's letter it also states:

"He stated Mr. Sabourin will need to provide the Town with a road typical that will show a cross section of what the road will be and it will include the drainage."

Strickon wanted Attorney Spinella to note that the letter said it was to include drainage. Attorney Spinella said he was not present in the meeting and was not involved with the negotiations so he cannot speak to any compromise that was offered or discussed by the Engineer Steve LaFrance of Horizons Engineering. "All we have to go on is what is here."

Strickon said that what Attorney Spinella was quoting is what Attorney Spinella put in his letter quoting from the April 27, 2005, Planning Board minutes:

“...the engineers are of the opinion if the drainage is adequate the road will stay healthy and will provide a much better product than currently is there. They must shim and over pave the road as well.” (emphasis added)

Attorney Spinella said that he notes that the May 26, 2005 Notice of Decision “specifically has a restoration directive”. Attorney Spinella said that in his client’s view, “the Notice of Decision does not entail adding additional drainage measures that did not previously exist”.

Phil Rackley asked the Planning Board to read from the May 26, 2005 Notice of Decision paragraph 4:

“Saber Mountain Partners, LLC will provide continuous maintenance throughout the period of development on Black Mountain Road from the intersection of East Branch Drive lower and to the intersection of East Branch Drive Upper to mitigate the damage caused by heavy equipment.”

And again from paragraph 5:

“In accordance with Article 5.07a of the Lincoln subdivision regulations Saber Mountain Partners, LLC will at the end of a (5) five year period, to begin upon final approval of the Site Plan, undertake to restore Black Mountain Road from the intersection of East Branch Drive lower to the intersection of East Branch Drive upper to standards defined by a road typical provided by Saber Mountain Partners, LLC to include drainage improvements, under drain, shim and over paving. The road typical will be included in the statement of responsibility for maintenance and repair as requested in section 5.08c of the Subdivision Regulations for the Town of Lincoln, NH. This document will be signed by the principals of Saber Mountain Partners, LLC and notarized.”

Phil Rackley noted that the Notice of Decision document was signed by both Pat Romprey as the Planning Board Chairman and Stacey Havlock as the Planning Administrator.

Attorney Spinella said “In 2013 the course of Black Mountain Road was corrected, but other than that, I have to agree, it says what it says.”

Daly said that he disagrees with the statement that Black Mountain Road stops at “The Landing”. Daly said he lives at 186 Black Mountain Road and now Attorney Spinella is saying that Daly’s road does not exist.

Attorney Spinella said that he was quoting from the January 2013 minutes two years ago where the correction was made. “It begins at the end of the Mountain Club parking lot and terminates at the property line at the Landing and does not include the upper portion of Black Mountain Road.” Attorney Spinella said the Planning Board was unanimous in its opinion.

Presentation of Attorney Scott Burke for Michael and Gina Donovan:

Attorney Scott Burke representing Michael and Gina Donovan set up a drawing of a plan of “The Landing” to show the Planning Board and the audience. Attorney Burke introduced himself as representing Michael and Gina Donovan who bought a lot on Back Forty Road last January and who live at Forest Ridge right now.

Attorney Burke said that since last year on December 22, 2015, some things change, some things don't. Now there is snow on the ground. There was no snow on the ground on December 22nd when the Planning Board heard from Schorr Berman and Attorney Spinella last. It is a month later and the Planning Board is still hearing the same story from Saber Mountain Partners; they are still complaining that they are being victimized.

Attorney Burke said he wanted to speak to the performance bond issue. Attorney Burke said that Schorr Berman in his letter and in his attorney's statement said that the Town has waived its right to ask for a performance bond to complete the rest of the required infrastructure for “The Landing” development. Attorney Burke agrees with the Town's Attorney Malia that because Schorr Berman d/b/a Saber Mountain Partners, LLC's let his approval lapse, the Planning Board “can really do anything as part of an extension”.

Attorney Burke said although time has passed; the Planning Board is still hearing that same argument from Schorr Berman and his attorney:

“I'm the victim. I was required to put up a bond. I was required by the original approval to put up a performance bond for the completion of this project. I didn't do it so now I want to argue waivers. You can't force me to do it.”

Attorney Burke said that again Schorr Berman is playing the victim. And despite playing the victim Berman wants to come before the Planning Board and say,

“[T]here is no reason for you to enforce it because I'm a good guy. I'm not in compliance. I haven't done what I'm supposed to do. I didn't post a bond when I was supposed to do it, but don't make me do it because I'll take care of everything now.”

Attorney Burke suggests that the Planning Board cannot trust that promise.

Attorney Burke said that Attorney Spinella argued this issue of “waiver as a matter of law”. Almost 30 years ago when Attorney Burke attended law school one of the things he learned was when somebody says that something is “a matter of law” but does not cite a case to support the statement, that is always a strong indication to think there is really nothing to support it.

Attorney Burke suggests that while a private party may waive something as a matter of law, it would be hard for Saber Mountain Partners to claim that the Town (depending on volunteer members of a Board) has waived the right to a performance bond merely because the Town did not enforce it for a period of time. Attorney Burke said to think about what a performance bond is. If Schorr Berman d/b/a Saber Mountain Partners, LLC, had a performance bond he would be paying an insurance company a premium of money so that if he defaulted and did not do what he needed to do, that insurance company would pay to complete the project. So by refusing to post

a performance bond, Berman is basically saying to the taxpayers of the Town, now you the taxpayers are going to guarantee that. If Berman does not finish the project the taxpayers will foot the bill to maintain, repair and complete the roads. The Town is not getting any sort of insurance premium to help pay for making that guarantee. Berman wants to avoid paying the insurance premium and he wants all of the taxpayers in Town to take the risk.

Attorney Burke continued, "We also heard tonight that there is confusion about what is considered to be the 'completion of the project'." Does Mr. Berman have to finish off the areas across the four (4) season stream which may never happen? We do not know when it will happen. Does he have to maintain Black Mountain Road during that time?

Attorney Burke acknowledged the fact that his clients, the Donovans, want nothing to do with Saber Mountain Partners, LLC. They want nothing to do with Mr. Berman. They want out of this project at "The Landing". They just want to get rid of this property and get the money back that they spent.

Using the plan of "The Landing" Attorney Burke propped up in front of the room, he drew with a marker to illustrate his presentation. Attorney Burke outlined the Donovan's lot on Back Forty Drive, showing a map of the area and the lot the Donovan's purchased from Saber Mountain Partners, LLC. Attorney Burke explained that the actual lot line was now a little bit different than was originally depicted on this plan of "The Landing" because Saber Mountain Partners moved the lot line to follow along the four (4) season stream. The stream basically comes down along the south westerly side of the Donovan's lot.

Attorney Burke said the Fire Chief Beard raised a concern that the fire department wants and needs turnarounds at the end of Back Forty Road and Buck Road for emergency access so the fire trucks do not have to back down the street, over hoses, slowing down emergency response time. It was in response to Fire Chief Beard's concerns that Mr. Berman came up with the idea of locating temporary turnarounds right before the four (4) season stream on Back Forty Road and Buck Road.

Attorney Burke suggested that instead of the turnarounds that were approved back in 2012 or 2013, in place of the original cul-de-sacs, just stop the project at the four (4) season stream. Build the turnarounds at the current ends of Buck Road and Back Forty Road. This way Schorr Berman would have to buy back the Donovans' lot. The Donovans would be happy to sell it back to him for the price they paid plus the engineering costs they have incurred to develop plans to construct a house. The Donovans would not have incurred these expenses if Berman had been upfront and told them that they would never get a building permit. In exchange for buying back the Donovan's lot, Berman would now own that lot in addition to the other four (4) unsold lots and that would give Berman the opportunity to create turnarounds where they are needed. Then someday when Berman finishes developing all of the lots up to the four (4) season stream he could look to develop the lots across the stream. Meanwhile, the size of the bond that Berman would have to post would be smaller because he would not have to worry about bonding for a bridge or culvert to cross the four (4) season stream. The Town would not have to worry about the infrastructure, meaning the Fire Chief's concerns would be taken care of because there are

actual turn arounds at the very ends of the two streets. There would be no houses past the turnarounds. Once this is completed the development will be done as contemplated.

Attorney Burke said that the new plan that he suggested would be the solution for Black Mountain Road. Then someday Saber Mountain or somebody else could come back to the Town and say they would like to create an add-on development across the four (4) season stream and start anew. Attorney Burke said that is his suggestion for what Saber Mountain Partners should do. It would result in a reduced bond. It would let this project come to some completion and not go on ad infinitum. It would let there be a solution to the ownership of and maintenance of Black Mountain Road.

Attorney Spinella's Rebuttal:

Attorney Spinella said, "To close the loop on this, [Attorney] Scott [Burke] is right that I have not cited any case law for this Board, but this Board was aware of the Black [Mountain] Road thing in court. I didn't think it was appropriate. You have your own counsel to tell you what the law is of waiver. I'm sure Mr. Malia is fully aware of the case law on that subject and advised the Board and a waiver has been filed against municipalities, not just private parties, so this is not such an esoteric area that we have to go back thirty (30) years of law school, thirty five (35) years in my case, and pull out what we were told about addressing judges without a case on a file."

Motion to close public hearing

Motion: Pat Romprey Second: John Hettinger

All in Favor: (5-0)

Hettinger said that there is a lot of unknowns here. He questioned whether the Planning Board could make a decision tonight. He also had questions about what needed to be looked at by the engineering firm Hoyle, Tanner & Associates. There are only three hundred (300) gallons of water per minute that is being provided to a community of eighty (80) some odd homes. He does not know how that happened. The four (4) water cisterns that were supposed to be built are not completed. It seems to Hettinger that we are almost at a point where Schorr Berman should have a new site plan submitted for completion of this project, not to let it go out for another 20 years. Define the completion of the project. What is completion? What are we doing to do? What is our obligation? Should we have the project reviewed by a third party?

Chair Spanos said that Schorr Berman d/b/a Saber Mountain Partners, LLC, is flat-out refusing to post the performance bond.

Robinson said that first of all, going back to what needs to be done on Black Mountain Road. Obviously there is some lack of clarity. If the Planning Board does decide to give Berman a continuation or an extension, those areas where there is a lack of clarity need to be cleared up.

Robinson said the drawing of the typical road cross section talks about an 'existing gravel base' and 'existing' pavement. However, then in other parts of the drawing it does not use the word 'new'; it says 'proposed' shim pavement and then it talks about a stone lined ditch, grass swale,

non-woven fabric, and three quarter inch ($\frac{3}{4}$ ") crushed stone. It does not use the word 'existing' on anything except where it says the 'existing gravel base' and the 'existing pavement'.

Robinson said he thinks that the Planning Board should take this drawing of the typical road cross section into consideration along with the case that Town Attorney Peter Malia talked about with the Judge's decision in Al McQuarrie vs. Town of Lincoln. Whether Saber Mountain Partners LLC was involved or not involved, or is bound or not bound by the Grafton County Superior Court's decision, it seems to Robinson that drainage was a part of the Planning Board's 2005 discussion and drainage was included in paragraph number 5 of the conditions in the Notice of Decision.

Robinson said that if Schorr Berman d/b/a Saber Mountain Partners, LLC, is unwilling to go along with taking over the responsibility for the drainage, Robinson thinks the Planning Board should put Schorr Berman back through full Site Plan Review. Robinson said that drainage was a part of the decision and drainage needs to be on any extension given to Schorr Berman. If Schorr Berman want to dispute that, that dispute would need to be addressed through Site Plan Review for the whole development. Full Site Plan Review would address what he considers to be a major issue.

Robinson said to Schorr Berman, "How do we define 'completion of the project' if we give you an extension?" Is the development going to go just to the four (4) season stream or is it going to go all the way to the end? If Berman does intend for the development go all the way to the planned end, Attorney Spinella is saying that his client does not need to bond it. Yet, 'completion' which involves roads and bridges over a four (4) season stream is a major expense for Attorney Spinella's client. Robinson said that Attorney Spinella says that the cost to build the two bridges over the four (4) season stream as well as the roads with the hammerhead turnarounds is too great for Spinella's client. However, Attorney Spinella is also arguing that a bond to complete the project is not necessary because the stream crossing does not need to be done at this time. Yet if it isn't done, where does that leave the Town if we ever have to take over that development?

Robinson said there is a lack of clarity on the definition of "project completion". "Project completion" needs to be defined. Does "project completion" mean just ending the roads and creating the temporary hammerheads at the four (4) season stream? If so, does that mean Berman will not complete Black Mountain Road until after he completes the development past the four (4) season stream? What if Berman does not complete the roads or lots beyond the four (4) season stream for another twenty (20) years? Does that mean Berman does not have to redo Black Mountain Road for those twenty (20) years? What happens when Berman sells a certain number of lots (more than 50%) and can turn over Black Mountain Road to the homeowners association and the lots across the stream are not developed yet? Robinson said those are questions that need to be answered before he can vote in favor of an extension. What is the scope of the project that the Planning Board is extending? What defines the "completion of the project"? Those two questions need to be answered before Robinson would consider voting for an extension.

Vice-Chair Romprey said that his opinion is the Town has no protection should something happen and Berman was to leave that project. The Town would be stuck with completing the entire infrastructure.

Vice-Chair Romprey asked Attorney Spinella, “You have already stated that your client will not post that [performance] bond?” Attorney Spinella said, “For the roads that are not yet complete, not including Black Mountain Road.”

Vice-Chair Romprey said that Attorney Spinella’s answer means that Romprey would have to vote to reject Berman’s request for an extension.

Attorney Spinella said his client was opposed to conditions for any construction beyond the four (4) season stream lot at that time.

Vice-Chair Romprey said that means that the Town has no protection at all. Why should the taxpayers foot the bill if something happens?

Attorney Spinella said if nothing is built beyond the stream, why would there be a need for a performance bond?

Vice-Chair Romprey asked Attorney Spinella and his client, “How much of the infrastructure is complete right now?” Romprey said he did not believe that Attorney Spinella could tell him; “We don’t know what is done and what is not done.” Vice-Chair Romprey said he thought that the bond “was imperative”. “If the only way we can get the bond is to put you back to Site Plan Review, then that is where it should go.”

Motion to Extend Planning Board approval for Saber Mountain Partners, LLC for “The Landing at Loon Mountain”.

Motion: Romprey. Second: OJ Robinson.

Discussion before the vote:

Robinson said that he would like to ask the developer a question before the vote because he is ready to vote “no” right now unless his questions are satisfied.

Robinson said that given the fact that:

- There was a meeting between the Beechwood II homeowners and Saber Mountain Partners, LLC, that resulted in an agreement memorialized in the July 28, 2005 typical road cross section that appears to address drainage;
- There was a Grafton County Superior Court case entitled *Al McQuarrie vs. Town of Lincoln* where Saber Mountain Partners was an intervenor, the Judge said drainage was included;
- In paragraph number five (5) of the Notice of Decision where drainage was addressed as part of the conditional approval;

Robinson asked Attorney Spinella and his client, “Do you want an extension to come back and tell us what is complete and what is not complete?”

Attorney Spinella said that he thinks that makes some sense if the answer to that question is going to be material to the Planning Board's vote.

Robinson said that he knows that the Planning Board has a motion on the floor and they are discussing the motion. His question to the Planning Board is, "Is it appropriate to vote on the motion or should we move to extend this meeting so that we know what we are voting on?" "As of right now, we don't".

Attorney Spinella said, "If a detailed statement as to the extent of completion of infrastructure up to the four (4) season [stream and] roads is needed [and] material for the Board to vote, certainly I urge you to put off making a decision until that happens. If it is not material, why bother? If we are talking about what is going to happen beyond the four (4) season [stream and] roads, that is a separate matter. Again, I urged the Board earlier to consider conditioning a bond as the back portion on any development that going on beyond the four (4) season stream. That's not going to happen today."

Vice-Chair Romprey said that the existing approval is for the entire project. Attorney Spinella said, he understood that.

Chair Spanos said that "The Landing" was not a phased project. Hettinger said that if Berman wanted to come back for Site Plan Review he could then phase the project.

Attorney Spinella said that his client hoped to avoid another Site Plan Review. He would like to get an extension here today. If these questions need to be answered today he cannot answer them without consulting Horizon Engineering. He is happy to ask the Planning Board to postpone this hearing until Mr. Robinson's questions can be answered, assuming the answers to these questions would be considered "material" to making a decision for the rest of the Planning Board members.

Chair Spanos said to Attorney Spinella that he and his client have not really given the Planning Board anything new. Attorney Spinella said that he does not see it that way; he has addressed the issues that the Planning Board requested in the letter.

Chair Spanos said that he sees the points spelled out in Attorney Spinella's letter as a rebuttal to what the Planning Board members were talking about.

Chair Spanos said that there is a motion on the floor and seconded. A yes vote will extend the approval; a no vote will not extend the approval. Does anyone have anything else they want to add?

Chair Spanos said, "All in Favor?" The room was silent.

Opposed? All five members said "no" or "nay".

Chair Spanos said the extension is not granted.

The vote was (0-5), being 0 in favor of the extension, 5 against.

Attorney Malia asked who voted.

Chair Spanos said that the five (5) Planning Board members voted and they all voted “No”.

Attorney Malia asked for clarification on who the alternates were versus who were actually voting members of the Planning Board. All five (5) regular members of the Planning Board voted. None of the alternates were seated or voted.

Attorney Malia told Attorney Spinella and Schorr Berman that a negative vote on their request for an Extension of Planning Board Approval does not mean they cannot submit a new Site Plan for review.

5 minute recess.

Motion to enter into non-public session per NH RSA 91-A:3,II(a) by roll call vote:

Motion: OJ Robinson.

Second: Paula Strickon.

All in Favor: (5,0)

Paula Strickon	Yes
John Hettinger	Yes
James Spanos	Yes
Patrick Romprey	Yes
OJ Robinson	Yes

Also present:

Norman Belanger (alternate)

Ron Beard (alternate)

All audience members and staff members left. Attorney Peter Malia left.

IV. NEW BUSINESS

Nonpublic Session under NH RSA 91-A:3,II(a) at 7:51 PM.

Motion to come out of non-public session per NH RSA 91-A:3,II(a) at 8:14 PM.

Motion: Romprey. Second: Beard.

All in Favor: (5-0)

Motion to leave nonpublic session and return to public session.

Motion: Beard. Second: OJ Robinson.

All in Favor: (5-0).

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

VI. ADJOURNMENT

Motion to adjourn at 8:15 PM.

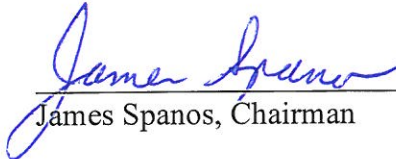
Motion: Beard. Second: OJ Robinson.

All in Favor.

Respectfully submitted,

Wendy Tanner,
Planning and Zoning Recorder

Dated: January 27, 2016


James Spanos, Chairman