

**LINCOLN PLANNING BOARD**  
**REGULAR MEETING MINUTES**  
**WEDNESDAY, DECEMBER 14, 2016 – 6:00PM**  
**LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

**APPROVED**

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

**Members Excused:** Vice-Chairman R. Patrick Romprey, Paula Strickon and Callum Grant (alternate)

**Members Absent:** None

**Staff Present:** Town Manager and Town Planner Alfred "Butch" Burbank, Planning and Zoning Administrator Carole Bont, and Wendy Tanner (recorder)

**Guests:**

- **Myles Moran**, 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, 104 Main Street, North Woodstock, NH 03262
- **Mary Jo Levitsky** – resident, 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.
- **Justin Roshah** – guest, 121 Toad Hill Road, Franconia, NH, student intern at the Littleton Courier newspaper

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

*Chairman Spanos called the meeting to order at 6:00 PM.*

Pat Romprey, Paula Strickon and Callum Grant are excused.

Norman Belanger and Ron Beard are seated.

- II. CONSIDERATION** of meeting minutes from:

- November 29, 2016

**Motion to approve the minutes of November 29, 2016 as amended.**

**Motion: OJ Robinson      Second: Ron Beard      All in favor: 4-0**

**III. NEW BUSINESS:**

- A. 6:00 PM. Citizen Petition.** Board of Selectmen Presents Planning Board with Citizens' Petition to Amend Zoning Ordinance at the 2017 Annual Town Meeting.

1. Publication to take place on Wednesday, December 21, 2016 in the Littleton Courier.

2. First public hearing will be held on **Wednesday, January 11, 2017**, at 6:00 PM.

The Planning Board accepted the petition with the following motion:

**Motion to accept the petition as presented.**

**Motion: John Hettinger      Second: Norm Belanger      All in favor: 4-0**

**Motion to set the public hearing for review of the petition to amend zoning ordinance on January 11, 2016 at 6:00 PM.****Motion: Norm Belanger      Second: John Hettinger      All in favor: 4-0****IV. CONTINUING AND OTHER BUSINESS (Staff and Planning Board Member/Alternates).**

**Wednesday, December 28, 2016, at 6:00 PM** a public hearing for proposed amendments to the **Stormwater Management Ordinance** and Planning Board's proposed amendments to the **"Land Use Plan Ordinance"** will be held (due to the requirements of NH RSA 675:3&7 to publish notice for the first hearing on proposed amendment of a zoning ordinance if a second hearing is anticipated - 10 clear days prior to the public hearing).

**A. 6:00 P.M. Stormwater Management Ordinance**

1. Discussion about "legal advice" re: recording Town's refusal to issue a Land Use Compliance Certificate for properties with noncompliant retaining walls.

Bont said that at the last meeting the goal was to have a public hearing tonight about Stormwater Management. Bont explained that to get the notice into the weekly paper, the meeting would have to be put off until December 28, 2016. Bont said that she will be on vacation during that meeting but will try to pull together everything possible beforehand so that the meeting will still take place.

The December 28, 2016, meeting will have two items on the agenda:

1. Public Hearing on proposed amendments to the Stormwater Management Ordinance;
2. Public Hearing on whether to amend the definitions for "structure" and "building" and whether to define "temporary structure" versus "permanent structure" in the Land Use Plan Ordinance.

The January 11, 2017, meeting will have two items on the agenda:

1. Public Hearing on whether to change the wording of "building inspector" to "Selectman or their designee" in the Floodplain District section of the Land Use Plan Ordinance;
2. The Public Hearing for these changes will be on the same date as the Citizens Zoning Amendment Petition.

Chair Spanos asked if the Planning Board should be working on the wording of the proposed amendments tonight. Town Manager/Planner Burbank said yes. Bont said that members of the Planning Board may not like the wording or may not be in favor of any of the proposed changes. Chair Spanos said that the Planning Board should review the changes to the Stormwater Management Ordinance.

Can the Town Record a Document Indicating Failure of Property to Receive a Land Use Compliance Certificate?

Bont said that she emailed the Town Attorney the Planning Board's question about whether or not the Town could record a document indicating that the property had not received a Land Use Compliance Certificate due to noncompliance with the State Building Code having to do with retaining walls or some other matter. She has not received any legal advice from Attorney Malia yet, but he is still looking into it.

Town Manager/Planner Burbank said that if the Planning Board could discuss the proposed changes tonight, that would give the Town Staff some administrative direction.

Bont said that if Attorney Malia comes back and says that the Town cannot record such a document in the Registry of Deeds, then perhaps the Planning Board could advise the administration about what else would work for the Town to put prospective buyers on notice. Several people on this Planning Board have realty experience. What would be an adequate notice for a Realtor's client? Realtors rarely come in to look at any Town files unless there is a bank involved which, in Lincoln, seems rare.

Chair Spanos (a Realtor) said that if something is discovered by the Realtor, it must be disclosed.

Town Manager/Planner Burbank said "I have a call waiting [for an answer] right now. It's on the levee issue, but it involves walls and a pending sale." The administrative staff needs direct advice about what we should be telling the Realtors, banks or the attorneys or whether we should expect the Realtors to disclose this information. For example, there is a State Building Code that addresses retaining walls in particular.

Chair Spanos said that retaining walls are also addressed in the Town's Land Use Plan Ordinance specifically.

Town Manager/Planner Burbank said it is not clear to Town staff what types of information Realtors are required to tell their clients. Recording a document properly in the chain of title would go a long way towards giving prospective buyers adequate legal notice of an existing problem with noncompliance. Most, if not all, prospective buyers perform a title search before purchasing property. Burbank recommended that the Planning Board discuss the matter now so that once the legal opinion comes in the Planning Board will be able to make a decision.

Robinson said that the Planning Board should wait for the legal opinion which will provide the answer to the question whether such a document can or should be recorded at Registry of Deeds. Robinson said that regardless of what that opinion is, there should be a document in-house with that information. Robinson's opinion is that the Town should issue a written denial or rejection letter that says that a Land Use Compliance Certificate (LUCC) was not issued and this is the reason why. The LUCC may be denied because of a rock wall issue or a drainage issue, but the document would specifically state the reason why. Then when someone is going to sell that piece of property in twenty (20) years and if we just don't find the LUCC in the files, the Town will not just say, "Well, Carole must have forgotten to do it." We want it to be clear that, "No, she didn't forget to do it. Here is why. It is in the file." If the Town can register the document at the Registry of Deeds that will be fine. If the Town cannot, the document is still in the Town file. At some point in the buying process the prospective buyer should inquire at the Town offices to see if everything is compliant with State and Town ordinances.

Hettinger asked if that normally happens. Bont said that it is very rare that Realtors come in and look at the Town property files. Occasionally they do, but it is more like once every three (3) or four (4) months. There are more sales than that figure would indicate.

Chair Spanos said that "All they do is look at the tax card."

Hettinger asked out of how many sales do they make an inquiry. Do they inquire in one (1) out of ten (10) sales? Or more often?

Town Manager/Planner Burbank said that this is the first one that he has personally received in the past six (6) or eight (8) months. There is a pending sale. A Realtor has called in and said, “What is up?” The Realtor has to disclose any problems that he knows about. So if there have been other sales going through none of their Realtors have communicated with Town Manager/Planner Burbank. For example, what happens now is that suddenly the new buyers are confronted with a problem – like the status of the levee and their relationship to any liability associated with the levee.

Hettinger said that if we want to protect the future homeowner, we need to put the document in a place where a prospective buyer is going to see it.

Town Manager/Planner Burbank said that the Town can say, “Here is the map and lot file”.

Bont said, to be fair, nothing in the Planning department of the Town offices had been filed for years. There are some documents that are filed now, but there are still a lot of documents that are not filed yet. We do have a lot of the documents filed now, but we have many boxes of documents yet to sort through and file.

Town Manager/Planner Burbank said searching the Town files for permits or lack thereof when a prospective purchaser is researching the title is the correct way to do “due diligence”. If a Realtor or an owner does not do “due diligence”, the Town cannot control that. If a document indicating the property is not in compliance with local ordinances was in the Town records and they did not come in to see the document, at least the Town is not negligent. Arguably, a property owner cannot come back to the Town and try to hold the Town liable for hiding information.

Hettinger asked if the Realtors were supposed to check with Registry of Deeds to see what documents were filed there and relay that information to prospective buyers. Town Manager/Planner Burbank said he did not know. Chair Spanos said that Realtors would not look through the records. Hettinger said that chances are that a Realtor would not want to either. Chair Spanos (Realtor) said, “If I open my mouth, I own it!”

Town Manager/Planner Burbank said the Town has some minor problems with certain properties, but the Town also has some major issues with other properties and if that information were known, that would have a large impact on the salability of certain properties.

Bont said that the last two issues that brought to light were not illuminated due to inquiries made by the Realtor. The two inquiries were made by banks because the new owners were intending to finance their purchase with a mortgage. The banks intending to lend the money sent a surveyor or appraiser to check out the property, doing their “due diligence” prior to lending the money for the sale. In one case, one end of the house and a later addition are both built within the setbacks. The lack of compliance was discovered by the bank’s surveyor and the bank’s appraiser. The last two inquiries came from banks doing their “due diligence” prior to making a loan.

Hettinger said that “It is, in a way, a life or death situation. There is safety involved. It may be paramount that the new owner be advised.” (i.e., referring to the retaining walls and the stormwater management issues.)

Town Manager/Planner Burbank said that are also some aesthetic issues that arise as well as safety issues. Just recently, a situation came to our attention where there was one house that should have been twenty-five feet (25’) from the property line, but because they did not realize

that the zoning district they were in had twenty-five foot (25') setbacks instead of fifteen foot (15') setbacks. They built the house and then the addition as if the zoning district had a fifteen foot (15') setback. The building is ten feet (10') closer to the property boundary line than it should be. "Now is that life or death? No, but visually it is not good."

Hettinger said that he was concerned about the noncompliant cases that had an impact on safety. "Kids playing on [noncompliant] rock [retaining] walls is not good."

Town Manager/Planner Burbank said that if the Town can register a document in the Grafton County Registry of Deeds for properties that are noncompliant, then almost every potential purchaser performs a title search at the Registry of Deeds prior to purchasing the property. If the Town could record documents of noncompliance then the Town should be able to raise a "red flag" to warn potential purchasers to at least do a little more digging and maybe potential purchasers will end up in the Town Hall to look at municipal records.

Chair Spanos said that the Town should put such a document where potential purchasers can find it. Town Manager/Planner Burbank said that he is currently researching and getting a cost estimate to implement a type of digitally accessible filing system.

Chair Spanos asked if a note about noncompliance could be put on the property tax assessment card. Town Manager/Planner Burbank said that was a good thought. Bont said that she did not think the property tax assessors could put information about noncompliance on the property tax assessment card unless such noncompliance impacted the fair market value of the property in some way.

Chair Spanos asked whether the Town did not actually have control over the property tax assessment card. Bont said, no, the property tax assessors have professional standards that they have to meet in preparing the property tax assessment cards. Property tax assessors are not supposed to put anything like "noncompliance with municipal ordinances" on the property tax assessment card unless such noncompliance impacts the estimated fair market value. Bont said that some types of noncompliance would impact fair market value so in that case the property tax assessor would mention noncompliance on the property tax assessment card.

Robinson said that he thought that if the property owner of a building could not get a Land Use Compliance Certificate (LUCC), the value of the property would be diminished in some way and noncompliance would make the lot very difficult to sell.

Town Manager/Planner Burbank said that the Town would have to look at the issue of noncompliance, legally. If the Town does not issue a Land Use Compliance Certificate (LUCC) would be the same as if the Town did not issue a Certificate of Occupancy (CO). The Town does not issue Certificates of Occupancy (CO) for buildings unless the project is a "commercial" building and then the Town Fire Chief can "step in". But for the most part, if the Town does issue Land Use Compliance Certificate (LUCC), right now in the Town of Lincoln, that fact gets lost to a potential purchaser unless the purchaser is doing "due diligence" by asking to see the Map & Lot files. Even if a potential purchaser and their Realtor might not realize that should be done as part of their "due diligence". If a buyer purchases a property with cash without a bank to finance the purchase the failure of the prior owner(s) to do "due diligence" and discover that prior owners failed to get a Land Use Compliance Certificate (LUCC) has huge ramifications. The new owners want to upgrade their property later with additions and when those folks who

did not do their due diligence discover they cannot, “they blow up and then we are pressured, years later, to issue a variance or a special exception.”

Town Manager/Planner Burbank said that if the Zoning Board of Adjustment (ZBA) grants a variance or special exception in all of these cases where the purchasers did not do their “due diligence” then more and more buildings or projects still does not meet the requirements of the Land Use Plan Ordinance. Bont said that consequently, the members of the ZBA are a little more active recently than they like to be. Town Manager/Planner Burbank said that Town Staff is finding that staff does not have the authority to grant either special exceptions or variances.

Chair Spanos said that the Planning and Zoning Administrator should write a letter about the noncompliance and drop it into the “Map & Lot file”.

Town Manager/Planner Burbank asked if the Planning Board members thought the letter of noncompliance should be some sort of a form letter or denial letter with the reasons spelled out. Burbank also asked if the Planning Board wanted the document of noncompliance to be signed by the Planning Board or the ZBA or by staff members.

Chair Spanos said that he thought “it should be run by the Planning Board”. Robinson thought it would be a good idea to bring the proposed letter to the Planning Board at a public meeting.

Town Manager/Planner Burbank said that the Town staff could bring the proposed letter of noncompliance into the Planning Board as an agenda item at a public meeting. They will still get the results of the Town Attorney’s research about whether the Town can legally record a letter of noncompliance at the Registry of Deeds and share that with the Planning Board at their next meeting.

**B. 6:00 PM. Land Use Plan Ordinance** - Discussion in general about proposed changes to Land Use Plan Ordinance:

1. **Floodplain Development District** - Change words “Building Inspector” to “Board of Selectmen or designee”. Public hearing for proposed amendments to be held on **Wednesday, January 11, 2017**
2. **Discussion of proposed Definitions:**
  - a. **Proposed Amendments to definitions of “Building” and “Structure”**
  - b. **Proposed Addition of definition of “Temporary Structure”**
  - c. **Proposed Addition of definition of “Permanent Structure”**

Bont gave the Planning Board examples of definitions for “Building” and “Structure”, “temporary structure” and “permanent structure” from the NFPA Life Safety Code (adopted by the State of New Hampshire) and from a number of other jurisdictions, both from New Hampshire and other states.

**DEFINE TEMPORARY VERSUS PERMANENT STRUCTURES**

**Tents & Storage Containers**

Bont said that she, Fire Chief Beard and Town Manager/Planner Burbank thought that the distinction between “permanent structure” and “temporary structure” had risen to a higher level

of importance because of the collapsed tent in Lancaster where a man and his young daughter were killed. After those fatalities, the State Fire Marshal decided to enforce State Building Code Regulations that were already in effect, but had not been enforced. The Town of Lincoln now has a number of these structures that are characterized as “tents” which sounds like a “temporary structure” but have more of a permanent nature (i.e., tied down to a series of very large concrete blocks). These “tents” are more like “permanent structures” in that they are up for several years and therefore, probably should be treated more like permanent structures.

Town Manager/Planner Burbank said that an example of a more permanent structure would be the various salt and sand sheds around town. Many of the small property maintenance companies seem to have them. Some of these structures are sitting right on the edge of property lines. These structures are not short term structures; they are sited forever. These structures violate setback rules. They have proliferated since Town Manager/Planner Burbank has been there. Town staff believes the Planning Board should look at these “temporary” structures and decide how Town staff should treat them in relation to the setbacks, lot coverage, etc., requirements in the Land Use Plan Ordinance (LUPO).

Bont when she and Town Manager/Planner Burbank first started working in Lincoln four years ago they started getting inquiries from people about whether or not Land Use Permits were needed for their “temporary” tent-like structures. People called and said, “It is like a tent or a tarp that we want to put over our salt or sand pile.” Bont went on line and saw photos of little tent like structures. Bont & Burbank reviewed the materials on line and compared the “temporary structures” to what the Land Use Plan Ordinance (LUPO) said. They looked at what other NH towns were doing. In their opinion, the ordinance did not address “temporary structures”. After some discussion with both the Chair of the Planning Board and the Chair of the ZBA, they told people that no Land Use Permit for a “temporary” “tent” was necessary. However, much later when Bont & Burbank actually saw these structures in real life, they discovered that the “tent” or “tarp” was not as they had envisioned when speaking with the property owners. The little “tent” is sometimes the size of a three bay garage. The fabric “tent” was anchored by a series of huge cement blocks standing “cheek to jowl” and supported by a large steel frame. The “tent” looks quite permanent in that it has been there for three (3) or four (4) years and the owners expect these “tents” to last for many more years. Furthermore, the “tent” is located directly in the setback area, irritating neighbors just like a more permanent structure would.

Bont said that consequently, the Town staff’s thinking about “temporary” structures has evolved. The “temporary structures” have become more and more permanent in nature. Municipalities already have guidance from the State NFPA Safety Code that states any building or structure that is intended to be in place for more than one hundred eighty (180) days in any consecutive twelve (12) month period is considered by the building code is a “permanent structure”. Even though the Town of Lincoln did not adopt RSA 155A, and Lincoln does not have a building inspector to enforce it, the State Building Code still applies to all building in the State of New Hampshire. Bont recommends that the Planning Board consider whether to dovetail elements of the NFPA Life Safety Code by using the same definition of a “temporary structure” and “permanent structure”. Bont would prefer the Land Use Plan Ordinance (LUPO) be clear about the difference between a temporary and a permanent building or structure that requires a permit and that which does not. Every time someone has one of these structures, Town Staff would prefer to avoid a long argument with an applicant about whether a permit is needed for a “tent”. “It’s

really a tent and it's going to be up 180 days or I don't know how long it is going to be up or as soon as the snow goes away I'll take it down". Bont toyed with the idea of lifting the language from other towns and using language like, "...including but not limited to..." and then listing some examples that would offer guidance to both the applicant and Town staff.

Chair Spanos asked if there are any issues with shipping containers. Bont said Town staff has permitted a couple of shipping containers because the property owners or tenant business owners applied for a Land Use Permit to use shipping containers as sheds or buildings. If you watch the "Little House" show, you will see that people are now using shipping containers for residential homes, commercial buildings and garages.

Town Manager/Planner Burbank said that there is one storage container that he is aware of located right in Town that is permanent; Burbank does not believe that the storage container is in the setback. The storage container has clearly become a permanent storage area. The property owner would say to the assessors "That storage container is just temporary."

Town Manager/Planner Burbank said that a particular storage container might be used as a car garage or for permanent storage. The Town looks at such a structure this way - if that storage container is staying permanently on your lot, you should pay taxes on it. If the purpose of the storage container is to store your furniture temporarily while you renovate your house, that is a different story. Keep in mind, a renovation could take a year. Chair Spanos if they left the storage container on the lot for thirty (30) days while they move some stuff, there would be no issues. Town Manager/Planner Burbank said that was correct, if you get to the one hundred eighty (180) days or six (6) months.

Bont said even if the storage container was there for six (6) months and the owners came in and said "I'm not finished renovating" the Town staff is generally very flexible. However, if the property owner puts a storage container on his lot and we discover that his in-laws are living in there that is a different story.

Town Manager/Planner Burbank said that if the storage container was placed in the setback we could say to the neighbor, "yes, the storage container is in the setback, they have moved all their furniture into it so they could renovate, but it will be gone or it is going away as soon as they are done". If a storage container is on the property for a couple of years that is a "permanent structure". We have a situation where there is both a storage container and a tent salt shed that is literally on the property line. When someone has what people think of as a "temporary structure" like those are that have been there for a long time, people tend to think that the temporary structure is almost there by right. Town staff does not want to get into that battle with property owners.

Chair Spanos asked if any of these salt sheds are greater than four hundred (400) square feet in size. Bont said yes. Bont said that four hundred (400) square feet "tent" is just a tent that is twenty feet by twenty feet (20'x20'). Some of the "tent" salt sheds are big enough for two or three pieces of heavy equipment plus the salt and sand pile.

Town Manager/Planner Burbank said that everyone is aware of the "tent" behind Aubuchon Hardware Store. Paul Beaudin also has a pretty good sized fabric tent structure behind his house that is used as a "salt shed" sitting in the middle of a residential neighborhood. If you look at just those two "tents", those "tents" have become pretty substantial structures. The Planning Board may not want to regulate these types of structures. That is fine. Town staff just needs to



know how the Planning Board expects them to handle this situation. If the storage container or the “tent” is on the property permanently it is probably a “building” or “structure” for the purposes of the Land Use Plan Ordinance (LUPO) and needs a Land Use Permit (LUP).

Chair Spanos said that the more stuff you put on the list to regulate, the more money you have to spend to administer.

Bont said that Town staff is asking for the Planning Board’s guidance. Should the “temporary structure” that is on the lot permanently require a Land Use Permit? Or do we have to come back and discuss each of these structures with the Planning Board. It seems the situation is never exactly the same twice.

Town Manager/Planner Burbank said most people do abide by the rules. Most people come in and get a permit. If you tell them their structure needs to move six feet (6’) to the left, they try to move it six feet (6’) to the left.

Chair Spanos said that there are just a few people who are abusing the rules; that is really what the problem is. Town Manager/Planner Burbank said that he did not think people were abusing the rules necessarily. The problem is that the Land Use Plan Ordinance (LUPO) does not address this matter – the tent and the storage container are designed to be used temporarily, but then end up becoming permanent structures on the land. There is nothing clear in the ordinance that addresses these types of structures.

Bont said that when larger fabric tents first came on the market they were designed to be used as small garages or for temporary storage. The tents were also inexpensive compared to the cost of building a wooden shed or garage. People who saw them thought of them as “temporary”, but suddenly there are several of these tents and they were very large and attached to a row of huge cement blocks. These tents began to irritate the neighbors. The neighbors called us up and said, “How come you let him put that enormous building up next to my property boundary line?” “I never got notice about that.”

Robinson said that he thought the way Bont has written the definition was excellent; and the definition removes some of the gray area. Robinson said that Bont and Town Manager/Planner Burbank spend a lot of time figuring out the stuff that falls in the gray area. This is just narrowing the size of that gray area and making it clear that these types of structures are buildings and need Land Use Permits (LUP). He did not see that there is a reason for treating the tent or storage container any differently than a wooden shed. If he wants to build a shed two feet (2’) from my property line and the Town says he cannot do that, so he should not be able to say, “Okay, fine, I’m going to bring in a storage container, or build a Quonset hut and put those up within two feet (2’) of my boundary line.” It is still the same thing. The Town should not say that a tent or storage container or a Quonset hut is not going to be regulated but the wooden shed is. Robinson sees it as giving Bont and Town Manager/Planner Burbank direction to not be in that gray zone.

Bont if you look at the Land Use Plan Ordinance (LUPO), if an accessory building is less than a certain size there is a lesser setback requirement. So a tiny shed can be closer to the property boundary line than a larger one. There is a different setback requirement for small accessory buildings. These tent-like structures are not tiny like a little shed. These tents are substantial in size.

Chair Spanos said that the Planning Board could leave enough room for judgement. Town Manager/Planner Burbank agreed.

### **Outdoor Wood Boilers**

Hettinger asked about the outdoor heating units that are placed outside cabins. Bont said she granted a permit for an outdoor heating unit where the wood stove is in a structure some distance from the house and the heat is pumped through an underground pipe to the house.

Hettinger said that if heat goes to three or four cabins nearby, that heating unit is a structure too.

Town Manager/Planner Burbank confirmed that Hettinger was asking about outside furnaces. Town Manager/Planner Burbank will do some checking. In other towns, fire chiefs in particular have looked at outdoor furnaces, but Burbank does not think that the outdoor furnace was considered a structure in those towns, but he will check.

Chair Spanos said that there are state or federal regulations for those furnaces. Town Manager/Planner Burbank said that there are regulations that pertain to the smokestack height and setbacks or separation between the furnace and combustible structures.

Robinson asked why would that not be considered a structure it's got a permanent location on the ground. Town Manager/Planner Burbank said that although the furnace looks like a building the manufacturer would tell you that it is only a stove. Unless they build a structure for the furnace to sit in, those furnaces sit out in the air. A lot of people build a decorative shed to store the wood inside. That decorative house would be a structure. Those outdoor furnaces are meant to sit out in the air with wood piled up around them. We would have to check on that. Burbank was not sure if there were any in town.

Fire Chief Beard said that there are a few outdoor furnaces in town. There are three (3) outdoor furnaces on US Route 3 north. The boiler is separate and then they also have a wood storage shed. The owners of Pemi Cabins block their outdoor furnace in a little bit.

Hettinger said that if you drive by Pemi Cabins you *know* they are using an outdoor furnace there. Town Manager/Planner Burbank said that there are definitely smokestack height requirements because he has a relative who has an outdoor furnace. His relative was told to make his smokestack higher. That is when Burbank learned that there is a standard smokestack height. Burbank said he could check on what the outdoor furnace requirements are.

Bont asked what these outdoor furnaces were officially called. Fire Chief Beard said the outdoor furnaces are called "outdoor wood boilers". Bont said that she did give a Land Use Permit for an outdoor wood boiler two (2) or three (3) years ago.

Hettinger said that the smoke from an outdoor wood boiler can be really obnoxious if you live next door. Chair Spanos said that who knows what people actually burn in their outdoor wood boilers in the middle of the night.

Town Manager/Planner Burbank said that with oil prices going up and wood prices dropping, wood is getting popular.

Chair Spanos asked if whether the Planning Board should include outdoor wood boilers in the definition of a "structure" and should include these in the public hearing. Hettinger said that his opinion is not to limit it to "buildings" because there are other "structures" you can have.

Bont said the Planning Board discussion has been about the difference between a “permanent” versus a “temporary” structure. In the current Land Use Plan Ordinance (LUPO) under the definition of “building” it says “building – also see structure”. The LUPO also has a definition of “structure”.

### **Retaining Walls**

Hettinger said that the new proposed definition of “structure” includes retaining walls. Bont agreed that the definition of “structure” includes retaining walls over four feet (4') in height.

### **Moveable Structures**

Bont said one of the arguments that she has heard a few times is “well it’s not really a ‘permanent structure’ because I can move it so I shouldn’t have to get a Land Use Permit.” Part of that argument comes from trying to avoid paying property taxes on a structure that is not permanently affixed to the ground. Initially, if you had a moveable building, which were usually farm buildings on skids or a three sided enclosure for a horse, the assessing profession said that it was not going to assess those types of structures for the purposes of levying property taxes. The corollary argument was “I shouldn’t have to get a permit for it either”. Bont’s question to the Board was “Do you care if someone has a moveable shed does not get a Land Use Permit for it? Just because you have what is technically a moveable shed does not mean you have to actually move it periodically. A moveable shed is still a building. It is still sitting on the ground, but it is theoretically movable if you roll it on logs.

Town Manager/Planner Burbank said that his argument is that anything is moveable if you have a big enough piece of equipment. Chair Spanos agreed saying that we could move the Town Hall building if we had to.

Bont said that she has had that discussion with property owners or Realtors approximately three times since she has been here. She advises them to put their movable structure out of the setback area otherwise they will irritate their neighbor. That is just advice, however, so if they do not need a permit for the moveable structure they do not need to take her advice. They can choose not to take her advice with no consequences from the Town.

### **Trash Bin Enclosures**

Robinson is in favor of putting that language in the Land Use Plan Ordinance (LUPO), but asked “What about size limits?” If he reads that definition it would include an ice fishing “bob house” or a dog house. Up at Parkers Hotel he built wood structure trash bins so that the trash cans were not sitting out visible. This definition would mean people would need a Land Use Permit (LUP) for trash bins a Town staff would have to come out and inspect trash bins. Robinson suggested that they not apply to something that is less than a certain size, like ten (10) cubic feet. There was a brief discussion about how to exclude specific structures like trash bin enclosures.

Bont said that in the Land Use Plan Ordinance (LUPO) “accessory buildings” that are less than one hundred fifty (150) square feet have a separate set of lesser setback requirements. For an example, in the Village Center (VC) District, if you have an accessory building less than one hundred fifty (150) square feet, which would be ten feet by fifteen feet (10’x15’), then your setbacks could be only five feet (5’) from the front and rear boundary line and zero feet (0’) from the side boundary line. Robinson asked, “Do we need a permit for that?” Bont said yes.

Robinson said that means that you need a permit for your dog house, trash bins and ice house.

Bont checked to see if there was anything that would take those types of structures out. She suggested that the Planning Board could make a list of things that did not need to be included which other towns have done.

Town Manager/Planner Burbank asked if you were a neighbor would you care if the neighbor's garbage was two feet from the property line. Bont said if your neighbor was McDonald's you would care.

### **McDonald's Trash Enclosure**

Bont was reminded to tell the Planning Board about McDonald's. Bont said that under the Land Use Plan Ordinance (LUPO) and the Site Plan Review Regulations (SPR) McDonald's should be coming in to the Planning Board for Site Plan Review to enlarge and move their trash enclosure. McDonald's will not be coming in for Site Plan Review, however, because they are reducing the impervious surface and the current intrusions into the setback areas. This is something that we should let the Planning Board know about. This was a judgement call that she and Town Manager/Planner Burbank made. McDonald's is removing the trash enclosure that they currently have. They are putting in a new enclosure that is going to be bigger, but similar in style and size. The location of the trash enclosure is going to be very close to where it is currently located. They are moving the location somewhat, however, they are going to remove some impervious surfaces so that the net result will be that the trash enclosure will be out of the setback area, further away from the boundary line and will result in less impervious surface because they will be adding some green area. The plan will be a net improvement to the site so they decided not to make McDonald's come in for Site Plan Review.

Town Manager/Planner Burbank said that a dumpster is larger than the definition of an "accessory building" with a maximum size of one hundred fifty (150) square feet or ten feet by fifteen feet (10'x15').

Robinson said that we could put a cubic foot minimum. Something that specifically excludes dog houses, trash bins, ice houses or other similar structures per the judgement of the Town Planner or Planning staff. Chair Spanos said that it was a gray area and makes a lot of subjectivity. Robinson said that he was only trying to eliminate ice houses and dog houses. Chair Spanos said that it has never been an issue before. Robinson said that we could go with not enforcing it.

Town Manager/Planner Burbank said that the only time we have an issue is if a neighbor comes in looking for the Land Use Permit (LUP). You have a neighbor with a permanent structure in the setback area.

Bont said that if the offending structure is a "bob house" it may be there more than one hundred eighty (180) days.

Fire Chief Beard said that some "bob houses" are not very big but some are huge.

Town Manager/Planner Burbank said that some "bob houses" at the fishing derby he saw were like condos. Town Manager/Planner Burbank asked if they should develop a list like other towns or just not over think it. Chair Spanos said to not over think it; the Land Use Plan Ordinance has been that way since 1986 without an issue. The Planning Board will not investigate "temporary structures" further.

**Retaining Walls & Window Wells**

Bont said that she did not think about the large window well on School Street as a “retaining wall” when they had the ZBA hearing about a variance. After discussing the window well with Fire Chief Beard after the ZBA hearing, she sees that the “window well” could be called a “retaining wall”. The window well on School Street is about four feet (4’) deep, five and a half feet (5.5’) wide and eleven and a half feet (11.5’) long. The “window well” looks like an attached small foundation. The School Street house has a series of nice full-sized windows along a long side wall of the basement. The owner calls the “foundation” a “window well”. The purpose of the window well was to allow natural light waft into their basement. The “window well” is essentially a retaining wall. It keeps the earth away from the side of the house where the windows are located so that sunlight and air can get in. Although the property owners have probably already finished their house as well as their basement, they have not invited the Town to inspect their building to obtain a Land Use Compliance Certificate (LUCC) yet.

Bont said she thought that the Planning Board should consider adding “window wells” to the definition of “structure” to include the type of structures as was built on School Street. Rock retaining walls are such a serious issue in Lincoln. The window well on State Street may be four feet (4’) high or less, depending on how you measure it. So if the retaining walls which comprise the window well are four feet (4’) high or less the window well may not really qualify as a retaining wall “structure” needing a Land Use Permit (LUP) under the current Land Use Plan Ordinance (LUPO). The proposed language is in the paragraph in red on page 3. The language is taken directly from the New Hampshire State Building Code. If the retaining wall is less than four feet (4’) in height, the Town does not need to worry about it – no Land Use Permit (LUP) is needed. The retaining wall does not become a “structure” needing a permit under the NH State Building Code until it exceeds four (4) feet in height. It also is important to include the language of “how do you measure that”. Bont said the NH State Building Code says to measure the retaining wall from the grade at the bottom of the wall to the top of the wall. The State Building Code does not just apply to rock or cement retaining walls; it applies to all kinds of retaining walls. In this proposed definition she just took the language right from the State Building Code.

Chair Spanos asked what the town ordinance has now for a definition. Bont directed Spanos to look at the definition typed in black just above the proposed definition typed in red just above it.

Belanger asked if when they talk about the height of the wall, are they talking about just the height of the wall, or do they include the footing underneath the ground. Belanger said that a lot of times the footing can be as much as twelve (12) inches underground. Bont said that the measurement includes the footing.

Belanger said that then you would be measuring from the bottom of the footing. Belanger said that if you can only see three feet (3’) of the wall, there could be another foot buried. Chair Spanos said that buried foot of the wall would not count. Town Manager/Planner Burbank said that it would count; the part of the retaining wall that is underground counts when measuring the height of the wall.

Hettinger said that every foundation would then be considered a “structure”. Fire Chief Beard said that a rock wall does not necessarily have a footing under it; they call it the “first course of rock”, which is normally below grade and then you build up from there.

Town Manager/Planner Burbank said, hopefully the “first course of rock” would be laid on undisturbed earth.

Belanger asked if the retaining wall is a rock wall, do you have to maintain that five degree (5°) pitch for anything less than four feet (4'). Bont said that designing and building a retaining wall that complies with the State Building Code is more complicated than it would seem. Chief Beard found a nice “cheat sheet” on how to properly construct retaining walls that Bont distributed to the Planning Board members. The “cheat sheet” has a nice summary and a good sketch of what is involved with a rock wall. The part of the NH State Building Code that applies to retaining walls is a multi-page document with a number of charts that Bont also distributed to the Planning Board.

Bont said that she has learned that building rock retaining walls is an art – a higher level of art than is evident in most of the rock retaining walls in Town. The summary says, “When are permits required?” (under the NH State Building Code). The answer: “A permit is required for retaining walls whenever the wall exceeds four (4) feet in height, measured from grade at the bottom of the wall to the top of the wall”. Does it matter what kind of wall I am building? No, all types of walls that exceed four (4) feet in height require a permit. These include but are not limited to, railroad tie retaining walls, landscape timber walls, stone or block walls and concrete walls.” In addition, those walls have to be inspected.

Bont said what the Planning Board should be looking for is to have the word “retaining walls” included in the definition of “structure” to serve as a threshold so that if someone has a piece of property and they are going to add a retaining wall greater than four feet (4') in height, for whatever reason, they follow the NH State Building Code and get the rock wall properly designed and properly constructed. Bont said that she, the Public Works Director and the Fire Chief inspect the houses. The multi-story rock retaining walls supporting those houses are unbelievable. Bont said “You really have to put your big boy pants on when you stand underneath that nineteen foot (19') high rock retaining wall and look up at the house perched above and over it. You feel like if you cough just right, those boulders will come down and it will be all over. The location of the house gives you a wonderful feeling from inside the house because it feels like you are at the top of this enormous tree house. When you look down over the house railing and the retaining wall the placement of the house over the retaining wall gives you a sense of flight.” Bont said that is probably the reason why all those downhill ski racers love those houses. It feels like they are skiing down a Black Diamond when they are sitting out on their deck. There is a very specific set of criteria for building those rock retaining walls. Prior to designing and building a retaining wall, the structural engineer requires the building to accumulate a fair amount of soil information and a certain amount of compaction has to take place before the builder lays down the first stone. Those requirements are probably not being met.

Bont said that safety is the reason the staff wanted to include a retaining wall greater than four feet (4') in height in the definition of “structure”. Bont said she could see some of those property owners saying “Well I'd like to have a place on the property where the kids could play some ball without falling over the edge.” Or they want to put a parking space next to the garage, because although they have the garage up there, there is no place next to the garage to park the guests. So they want to put a retaining wall next to the garage to support a parking pad for guests next to their tree house. They do need a permit for retaining walls. Staff wants the Land Use Plan Ordinance (LUPO) to make that clear.

Chair Spanos said that reading the proposed definition, it just says that you count the space that shows. From the bottom of the grade to the top of the wall to determine if it is four feet (4') high. You do not count underneath. Town Manager/Planner Burbank disagreed. Burbank said that it means you count from the base of the wall and in a lot of cases that base of the wall is in the ground. Chair Spanos confirmed that it means the grade at the bottom of the wall. Bont said to look at the bottom of the sketch on the "cheat sheet", where they can see where it says the finished grade; it looks like there are two rocks or blocks underneath the ground.

Chair Spanos said that we can put this on the agenda for December 28<sup>th</sup>.

### **Notify Abutters**

Robinson said he was not aware that abutters needed to be notified directly other than when the proposed change in the zoning district designation affects less than one hundred (100) properties. Robinson said we have to notify abutters by first class mail, not by certified mail. We cannot just publish a newspaper notice in the Littleton Courier.

Chair Spanos said that requirement only kicks in if the proposed zoning district designation affects less than one hundred (100) people. The petitioners' proposal would really only affect five (5) lots.

Robinson said notice was based on the number of abutters.

Bont said that the Planning Board members have a map of the lots impacted. Robinson said that it is definitely less than one hundred (100) lots. Robinson asked if it was the same time frame as the public notification.

Bont said that reading the Planning Board Handbook, the new notice requirements do not apply to petitioned zoning amendments.

#### **A. 6:00 PM. Sign Master Plan Update 2017 (if available)**

- I. CONTINUING AND OTHER BUSINESS (PORTION ONLY)** (Staff and Planning Board Member/Alternates).
- II. 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.

### **III. ADJOURNMENT**

The meeting was adjourned at 6:56 PM

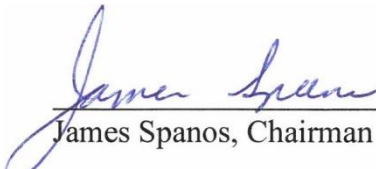
**Motion to adjourn.**

**Motion: John Hettinger      Second: Ron Beard**

Respectfully submitted,

Wendy Tanner,  
Planning and Zoning Recorder

Date Approved: 12/28/2016

  
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James Spanos, Chairman