

**LINCOLN PLANNING BOARD
REGULAR MEETING MINUTES****APPROVED****WEDNESDAY, APRIL 13, 2016 – 6:00PM****LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

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

Members Excused: Vice-Chairman R. Patrick Romprey, Norman Belanger (alternate), 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:

- **Bill Cargill** – Cargill Construction Co., 396 NH Route 49, Campton, NH 03223-4544, representing Brian L. & Jane C. Crowley building at 11 Hemlock Drive.
- **David Dixon** – 4 Liberty Lane, PO Box 1331, Lincoln, NH 03251-1331, owner of 4 & 6 Liberty Road, (Tax Map 107, Lot 069)
- **Myles Moran** – 11 O'Brien Avenue, Lincoln, NH 03251 (Map 117, Lot 024)

- 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.
Ron Beard is seated for Pat Romprey.*

- II. CONSIDERATION** of meeting minutes from:

- March 23, 2016

Motion to approve the minutes from March 23, 2016 as amended.

Motion: John Hettinger

Second: OJ Robinson

All in Favor.

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

- A. 6:00 PM – Planning Board Consultation re: How to apply Stormwater Management Ordinance to an individual lot & how to process request for waiver for 11 Hemlock Drive (Map 121, Lot 004) (0.44 Acres) owned by Brian L. & Jane C. Crowley, Trustees, 155 Cliff Road, Wellesley Hill, MA 02481. Should the Planning Board authorize the Town Manager/Planner to grant these conditional waivers and process these with the assistance of the Town Engineer paid for with moneys placed in escrow from the applicant?**

1. William J. Cargill, Cargill Construction Co., 396 New Hampshire 49, Campton, NH 03223

Town Manager/Planner Burbank presented to the Planning Board the question about whether the Planning Board should authorize the Town Manager/Planner to grant conditional waivers and process these with the assistance of the Town Engineer paid for with moneys placed in escrow from the applicant.

Town Manager/Planner Burbank told the Planning Board that he and Bont checked with town counsel. According to town counsel, the language of the current Stormwater Management Ordinance (SMO) does not allow the Planning Board to delegate its authority to the Town Planner to grant a conditional waiver after consulting with the Town Engineer. If the Planning Board did so before amending the language of the SMO, the Town could be challenged. In the case of the Crowley house, the Town and the contractor, William Cargill on behalf of his clients, will probably come to an agreement and the Stormwater Erosion and Sedimentation Control Plan (in lieu of a full Stormwater Management Plan) will work to produce the desired outcome of keeping excess water on the lot and preventing stormwater from causing damage to other lots and infrastructure, however, that might not always be the case. Burbank wants the Planning Board to know upfront that although he initially thought they should proceed as suggested on the agenda, now he knows that legally they should not make the change until they change the language of the SMO to allow it.

Bont said that when she and the Town Manager put this question on the agenda they thought maybe the Planning Board would be able to do it. They were talking with the Town Engineer Ray Korber and we were talking with the contractor for the Crowley House, Bill Cargill, about setting up a methodology or template for how they were going to handle these cases where the Stormwater Management Plan was required. In the Harris case discussed at the last Planning Board meeting, the Town Engineer Ray Korber worked with the owner's engineer to come up with a compromise solution and that process seemed to work well. Consequently, they thought the Planning Board might be able to authorize the Town Manager/Town Planner to grant those conditional waivers. However, after they suggested it to Planning Board Chair Spanos, Chair Spanos said he did not think that the language of the SMO appeared to allow that approach. They checked with Attorney Malia and he agreed with Chair Spanos. Attorney Malia suggested that they try to change the SMO at the next town meeting.

Bont said that they also asked Attorney Malia about the abutter notice requirement. If they had to hold a public hearing for every Land Use Permit application to build a new house would they also have to notify all the abutters. Attorney Malia reread our ordinance and he said the Town just needs to hold a public hearing. He did not feel there needed to be an abutter notice based on that. So this particular meeting would qualify as a "public meeting" with just a regular posting of the agenda required.

Chair Spanos said that they only have to notice a hearing without notifying the abutters.

Town Manager/Planner Burbank said that any new applications that require a Stormwater Management Plan would be an agenda item at a Planning Board meeting for the applicant or engineer they represent to come in with Town Planner Burbank and Administrator Bont and explain to the Planning Board steps taken to deal with the water issues on the lot. The Planning Board either agrees or does not agree. If the Planning Board does not agree then the applicant would come back in for a full blown hearing.

Hettinger asked if Ray Korber's comments would be available.

Town Manager/Planner Burbank said that Ray Korber's comments would be available at Planning Board meetings. The Planning Board would have the town engineer's comments and the applicant could be present. Administrator Bont would do the front work and have it all in a package for the Planning Board for each case. It looks like home building is getting popular again and they are selling lots. If all of these types of water issues go to a hearing for drainage issues, the Planning Board is going to be meeting a lot. Town Manager Burbank and Administrator Bont will try to streamline this process for a year until we come up with language for the Ordinance that will enable these situations to be handled administratively in house and take away the need for the Planning Board to meet.

Mr. Cargill stated that the lots really vary quite a bit depending upon where the lots are located and whether there is natural drainage running onto these lots or the lots are relatively dry. The lots located on the lower roads are all sitting in river gravel and there is no water on them at all. The lots located above the road have melt off from the ski trail areas draining down on them. One solution cannot fit every site. They will need to deal with the drainage issues site by site to get the proper drainage. Some of the lots that are dealing with drainage from the ski area, are engineered with a drainage swale that runs between the two lots. This solution was not designed by the engineers. This solution was arrived at because the contractors for the two abutters got together and the drainage swale between the two lots was the only solution they could come up with to deal with the water. The melt off from the ski trails was dumping onto the lots in the development. The trail designers just dumped all of the water right onto the lots. According to Horizons Engineer Stephen LaFrance it was not supposed to be done like that. The trail designers were supposed to put in ditch lines and things like that but the ground was all ledge so they did not want to spend the money to put in ditch lines. So there is really no perfect solution to the drainage issues up there other than try to deal with the one lot that he is looking to build on. The solution may change from lot to lot.

Hettinger said that at the bottom of the hill there are two houses in a hollow on the south side of the road, one on each side of the corner. Hettinger felt that those two houses would be flooded first so the developers should be careful to monitor how much water is allowed to run down that culvert.

Town Manager/Planner Burbank said that for the last house (Jonathan Harris) the Planning Board reviewed, the engineer created a drywell system to collect the water. On the next plan that came in the client had to design a separate septic system to catch all the run off. Some of these systems are pretty elaborate but drainage is being handled on a site by site basis.

Bont explained the maps on the wall. On the first map the applicant (Crowley) moved buildings forward on the property to remove fewer trees in the back. The second plan on the wall shows how the lot will look after they did the storm water, erosion and sedimentation control plan. There was a significant difference between the two plans. The initial conversation was about what appeared to be necessary to meet the goals of the Storm Water Management Ordinance.

Mr. Cargill described the plan like a leach field that would contain the water from the site and it would leach slowly back into the property.

Bont asked Mr. Cargill about some of the crosshatched detail on the site plan. Mr. Cargill said the areas were very large glacial boulders and that one of them would be removed as it is inside where the house will go. The second is between two lots and was undisturbed when they built the house next door and it will remain undisturbed. It is a very large rock.

Beard asked if the boulder located in the middle of the house had been blasted.

Mr. Cargill said they did not blast the boulder located where the middle of the house would be yet. The boulder is sitting on the surface. Mr. Cargill did not believe that the boulder could be moved and it may have to be broken up. Sometimes they slide the boulders downhill and make the boulders a landscape feature somewhere else on the lot.

Hettinger asked what the reason was for note 14 on the plan. After realizing that the numbers were a bit askew on the drawing, the line in question was number 15 which reads:

15. The owner is responsible for contacting a geotechnical engineer to evaluate any groundwater issues on a site. The geotechnical engineer is responsible for determining the methods in which to address any groundwater issues that are found on site.

Hettinger said that in his opinion once the drawing is approved by the Town Engineer and the Planning Board and it comes time for the house to be built, all the geotechnical engineering should have been done.

Mr. Cargill said that the engineer who created the drainage design wrote that paragraph. That paragraph is a statement covering the engineer's back because the soil was not tested.

Hettinger asked if that paragraph puts the responsibility for doing the soil testing on the owner.

Mr. Cargill said no, the engineer does not want to be responsible for the drainage design. The engineer that created the drainage plan does not want to be responsible.

Hettinger said that was the same problem with architects around here, no one wants to be responsible for anything. Hettinger felt that the drainage issues have been foisted upon the owner of the house, and asked if the owner has a problem with his drainage.

Mr. Cargill said "Let's put it this way, it is not on the engineer, it will probably be on me." The owner would put the responsibility onto the developer.

Chair Spanos asked Mr. Cargill if he would come up with a drainage plan and apply for a waiver from strict adherence to the Stormwater Management Ordinance (SMO).

Bont said that Town Engineer Ray Korber has not reviewed the plans for this property yet. She and Town Manager/Planner Burbank are looking to get some feedback from the Planning Board before asking Cargill to do that. Town Manager/Planner Burbank said that they have not signed an escrow agreement or established an escrow account yet.

Bont said they were trying to figure out how they were going to process these types of applications. Mr. Cargill has been very good to work with and is willing to do what is needed to do to reach the Storm Water Management Ordinance (SMO) goals, but they are trying to figure out what that process should be.

Chair Spanos said that the SMO says no water from the site leaves the site.

Town Manager/Planner Burbank said that the SMO says no water from the site leaves the site **over and above** what stormwater runoff was contemplated in the original AoT (Alteration of Terrain [Permit]). There are going to be numerous homes built in that development. Town Manager/Planner Burbank and Administrator Bont are working to get a system in place to come to the Planning Board for each of these applications for approval without getting into a full blown water study. Legally, this process cannot be done in-house administratively and each applicant's plan will have to be brought before the Planning Board for approval.

Bont and Town Manager/Planner Burbank said for instance, they could send this design plan off to Town Engineer Ray Korber for his review. This is the proposed process:

- Cargill's client would sign an escrow agreement with the Town and submit monies in the amount of \$1,500 to put into an escrow account with the Town.
- The Town would create an escrow account of \$1,500 and notify the Town Engineer Korber.
- Town Engineer Korber would then communicate with Cargill's engineer about information needed or necessary changes.

- Town Engineer Korber would submit bills to the Town. Bills submitted by Korber would be paid by the Town out of the escrow account. The \$1,500 dollars seemed to be enough for the Harris lot. That sum included a couple of visits by the Town Engineer during and after the process of installing the drainage system.
- If Town Engineer Korber does not use that much money, the extra money would go back to the homeowner.
- Town Engineer Korber could communicate directly with Cargill's engineer. The two engineers could come up with something that Town Engineer Korber thinks would satisfy the goals of the SMO.
- Then Bont and Town Manager/Planner Burbank would come to the Planning Board at their next meeting. The Planning Board might have multiple requests for waivers with Erosion and Sedimentation Control Plans to review at a meeting.
- Bont and Town Manager/Planner Burbank would give the Planning Board their recommendations.
 - If something was flagged the Planning Board could make additional requests for information; or
 - Place conditions on the waiver; or
 - If there is something substantial that impacts the lot like a brook runs through the lot or a river runs through the lot, the request for a waiver would probably not get to the Planning Board anyway because there would be lots of conversations between the engineers on the issue.
- Other than that the process for approval of a waiver with conditions could be as simple as a recorded vote that it was approved by the Planning Board. That is the most efficient way to do it.

Town Manager/Planner Burbank said, they are trying to streamline the process as much as they can. If that proposed process works for the Planning Board they will proceed. Then the Planning Board will only hear from them when they are in a public meeting presenting the Board with a request for a waiver with a final plan for Erosion and Sedimentation Control. "We're good with it. They are good with it. We would need your blessing."

Chair Spanos said that what the Planning Board did with Harris met the intent of the Stormwater Management Ordinance (SMO), the Planning Board waived strict compliance with the SMO and that is what they are looking to do here.

Town Manager/Planner Burbank said that they are dealing with a decade old or more AoT for South Peak Resort which is out of tune with what is being built over there. Bont said that the AoT is not in tune with their South Peak Resort master plan either.

Robinson said that he would agree with that process. Robinson was glad this issue was brought before the Planning Board because there is no sense dragging applicants into a Planning Board meeting every time someone wants to build a house in South Peak. Staff can guide applicants through their interaction with the Town Engineer Ray Korber and let Korber explain. Robinson thought the plans looked good to him, but explained that he did not understand certain things about the plans, like the closing measurements and if the proposed septic system was big enough, but Town Engineer Ray Korber would know. So go through that process with Korber and let him deal with the technical aspects of this plan and then just bring the revised plans in to the Planning Board and say, "This is what they want to build, this is what the system was designed for, Ray Korber agrees with it."

Chair Spanos said that Bont and Burbank can just present the request for a waiver and the design to the Planning Board. The applicant does not have to come in.

Robinson said if the applicants want to come in fine, however, it is Town Engineer Ray Korber they need to convince, not him. Robinson said he understands the concepts but not the calculations.

Cargill said that the other point is, with the Stormwater Management Ordinance (SMO), it is almost going to be a lot by lot drainage plan because the lots can vary quite a bit.

Bont said that there is another lot and situation that she wanted to ask the Planning Board about that is not on the agenda. Cargill is planning to build a house in another part of South Peak Resort. The lot in question is a much bigger lot than the minimum lot size. The Spada lot is 1.11 acres so the square footage [48,351.6 sq.ft.] is much greater than the minimum lot size [15,000 sq.ft.] for the General Use (GU) District. The lot does not meet either threshold that would serve to trigger the Stormwater Management Ordinance (SMO). The contractors will not be disturbing more than 15,000 square feet of the lot. The disturbed portion of the lot for a single family home or duplex will not be more than 50% of the lot so it does not meet the threshold to trigger the SMO for disturbing more than 50% of the lot. However, the square footage of the house and the other impervious surfaces exceeds the assumed square footage of impervious surfaces which was used to develop the AoT for South Peak Resort. Attorney Michael Conklin is representing David Spada who bought a lot on Yellow Birch Circle. The proposed house is in the same development but it is down further in the flat area near the bottom of the hill; it is not up on the hill.

Mr. Cargill added that the Spada Lot also has totally different soil conditions than the Crowley lot.

Bont said that as far as she could tell, even though the number of square footage of impervious surfaces for the proposed building and driveway surfaces is greater than the assumptions for impervious surfaces made for the South Peak Resort's AoT, none of the other thresholds are met. In her opinion, this project does not need to submit either a Stormwater Management Plan or request a waiver. She asked the Planning Board members if they agreed.

Chair Spanos said that disturbing more than 50% of the lot is the trigger. Bont said there are two triggers. One of the triggers is that the lot for a single family home or duplex should not disturb more than 50% of the lot. The second trigger is does the project disturb more than 15,000 square feet.

Fire Chief Beard asked if the Spada lot was comprised of two conjoined lots that were merged. Bont said no. Bont handed out maps of the larger lot that the Planning Board reviewed.

There was an impromptu discussion about the lots at South Peak Resort in general.

B. 6:00 PM – Planning Board Consultation re: whether to and how to apply Stormwater Management Ordinance (SMO) to a Planned Unit Development Lot (PUD) in the Little Coolidge Hamlet of the Coolidge Falls Development at 69 Westview Road (2 Blueberry Road R/W?) Map 124, Lot 015 owned by Supreme Mortgage Company, LLC, c/o Louis PO Box 5365, Manchester, NH 03108. Technically, the Stormwater Management Ordinance (SMO) would apply to all PUDs because the building can cover more than 100% of the land within the PUD envelope. Drainage is on Common Lands.

1. Domenico Gallinelli, 240 Newton Street, Waltham, MA 02453-8621

Bont explained that the writing on the maps was small and that the pink highlighted area is the envelope of the PUD (Planned Unit Development) and green highlighted area is the house. The house extends out past the envelope of the PUD. In the past they have issued a LUP (Land Use Permit) for applicants to

install a deck that extends beyond the boundaries of the PUD envelope. In the Homeowners Association Declaration a deck and a portion of the garage may extend beyond the envelope. In the past applicants would be asked to obtain an approval from their homeowners association before a LUP would be issued. This application has retaining walls on the common land and paving on the common land. How should the Planning Board and staff apply the SMO (Stormwater Management Ordinance) to the PUD situation?

There was a brief discussion about the size of the PUD and it was determined that the PUD was 50' x 55'.

Bont explained that all of the Coolidge Falls lots are PUDs, some are triplexes, some are duplexes and some are single family. The lots that are darkened on the map are the lots where the houses are not built yet. There are quite a few lots that are still available to be built on. Some of the vacant lots are for triplexes.

Town Manager/Planner Burbank said that the topography shows that water from Coolidge Falls Resort will run downhill to the NHDOT (New Hampshire Department of Transportation)'s state highway drainage system. All stormwater runoff that drains off that hillside comes down into the NHDOT drainage plan for NH Route 112. This particular home is a good example. The proposed house already exceeds the size of the original PUD envelope. The actual home is being built outside of the approved PUD that the Planning Board approved back in the 1986 - 1988 timeframe. The square footage of impervious surface that this home will create does not appear to be based on the original square footage that the AoT was designed for; the additional stormwater runoff was not planned for. Town Manager/Planner Burbank asked, "How are we going to apply the SMO to this PUD?"

Hettinger said looking at the print, it looks like the footprint of the home is not any bigger than the size of the PUD except that the garage sticks out about 8 feet. If you look where the deck is it looks like it would be picked up in the other empty spaces of the lot. One was 5,000 feet and one was 5,007 feet. Hettinger did not see what the big difference is.

Bont stated that the SMO triggers are: either (1) disturbing more than 50% of the lot for a single family home or duplex or (2) disturbing more than 15,000 square feet. She does not think that the SMO would apply here.

Chair Spanos said that the Planning Board allocated a minimum of 15,000 square feet of land per PUD. With that metric they are not disturbing 7,500 square feet. The requirement is 15,000 square feet per lot, so technically there is common land allocated with this PUD.

Bont said the drainage would be sited on the common land. The Town does not have any other AoTs for any other development except for South Peak Resort. The Town only has a copy of the AoT for South Peak Resort because the Town just paid \$400 to obtain a copy from NH DES. Going forward, it looks like we will need to order copies of the AoT's for each development because we do not know what assumptions were used to make the engineering calculations.

Town Manager/Planner Burbank said that to be consistent throughout the Town we should give these other developments the same scrutiny that we gave South Peak Resort. It looks like the buildings are consistently getting bigger than the original PUD envelope. When the developer started, buildings were supposed to stay inside the PUD envelopes and they have already moved outside of the PUD envelope.

Chair Spanos said that the Planning Board "could trade off the two corners and it would be pretty close".

Robinson asked who the engineer was who talked about the decks not counting for impervious surface because they shed water. Looking at the pink outline, the only thing that is impervious is small bit of the

garage. If you take the two empty spaces within the PUD, that garage portion is less than what is not being built on within the PUD.

Town Manager/Planner Burbank said that the Planning Board's opinion is that Town staff should not spend a lot of time figuring out whether the Stormwater Management Ordinance applies if the lot does not meet the criteria with the drainage issues.

Chair Spanos said that there are 15,000 square feet allocated to every PUD.

Strickon said, "We do have to look at those that come in. Let's face it, we know they are coming in with a thin edge of the wedge. You will have people who will push the limit and try to get away with more than what is allowed."

Mr. Cargill said that the Coolidge Falls Board is very strict about their building limitations. They only approve plans that have been tested many times with a lot of units. If everyone is allowed to really build way outside of these envelopes, that would have been happening a long time ago. They don't allow that now. It effects the abutters too. If you have infills and you have two abutters on either side of you, some of these PUDS are very tight, if you are building on an infill it may be difficult to deal with elaborate storm water. In the past, the water that was really the issue was the water coming down off the mountain and in most cases they were always dealt with in surface drainage that was picked up by the roads. It has worked pretty much over there. Mr. Cargill did not think they have a lot of drainage problems at Coolidge Falls.

Town Manager/Planner Burbank said this is the first proposed new home at Coolidge Falls Resort the Town staff has seen in quite some time.

Bont said Clearbrook Resort is also a PUD development. If the Clearbrook Resort and the Coolidge Falls Resort Homeowners' Associations are keeping track of contractors to make sure the contractors are building within the confines of their PUD envelopes (with whatever percentage they are allowed to go over with garages and decks) then, theoretically, this type of development should meet whatever the criteria was that was in effect at the time Coolidge Falls was engineered by the engineers who designed the AoT. Bont feels much more comfortable thinking that the drainage issue was adequately addressed for this kind of PUD development than the AoTs developed for single family lots at South Peak Resort or The Landing at Loon Mountain.

Chair Spanos said that the PUD development is a completely different animal.

Fire Chief Beard said to keep in mind that the Coolidge Falls plans show retaining walls and paved parking areas that are also located outside of the PUD envelopes. These retaining walls and paved parking areas create additional impervious surfaces. There are a number of PUD lots that are currently vacant, but if rock walls are needed, that will change. Did the AoT for Coolidge Falls take those walls and paved areas into account as well?

Town Manager/Planner Burbank said that a rock retaining wall will change any new lots built up there. That will be a change for Clearbrook because the sheer retaining walls will have to be engineered. Fire Chief Beard said that on the surface adding retaining walls is not going to take care of water. Robinson said that the uphill side of a retaining wall will decrease the water flow from water located above the retaining wall because "you will level it out, as opposed to not having a wall where the water would just run downhill."

Fire Chief Beard said that he was not sure if retaining walls were calculated in with the square footage, because under the NH State Building Code a retaining wall in excess of four feet in height is considered another structure on the lot. Mr. Cargill said that all the retaining walls in Coolidge Falls have been built on common land.

Chair Spanos asked if NH DOT had lodged any concerns. Town Manager/Planner Burbank said no, but if the Town starts to see drainage issues that will affect the highway in any way, the NH DOT will have to be notified. If the Town starts to see drainage issues along the state highway, the Town will have to get NH DOT involved.

Mr. Cargill said that they did ask the Homeowners Association if they were looking at any materials other than boulders that could be used as retaining walls. They said no, they want boulder walls. So the retaining walls will have to be engineered walls. By Town standards they will have to be engineered walls.

Robinson asked Mr. Cargill what he meant by saying “Town standards”. The retaining wall standards are NH State Building Code Standards. The Town does not have separate retaining wall standards.

Mr. Cargill said that the Town’s Land Use Plan Ordinance says they need an “engineered wall”.

Bont said that the Town took the NH State Building Code standards and put them into our Land Use Plan Ordinance just to remind people that retaining walls over 4 feet in height need to be engineered to comply with the NH State Building Code. Any retaining wall over 4 feet in height is considered a “structure” and falls within the jurisdiction of the NH State Building Code.

Mr Cargill said that he was not arguing about the fact that the regulation is there. The difference now is that in Lincoln now you have to have an engineered wall where historically you did not have to have an engineered wall. So we are looking at other materials that developments would allow other than rock walls because there are other walls you could build that might be easier. For example, it would be easier to build retaining walls out of large concrete blocks or something like that, however, the Homeowner’s Associations said no. They want the retaining walls to be stone walls. The Coolidge Falls Homeowner’s Association said no. Mr. Cargill said that was purely for consistency of development.

Hettinger said that he believes that the stone wall shown on the drawing located behind the house is there primarily to prevent them from having to dig a deep foundation because most of those houses are 4 and 5 stories high over there.

Mr. Cargill said that houses in Coolidge Falls are not 4 and 5 stories high from the street, but on the downhill side they are.

Bont said the proposed house in Coolidge Falls is on the downhill side. If you go onto Google Maps and look down Blueberry Road, you can see the triplex at the end of Blueberry Road. Westview Road goes all the way out past where it intersects with Blueberry Road. The buildings at the end of Westview Road are used by the Homeowners Association to house materials for maintenance. Westview Road goes all the way out there.

Bont asked Mr. Cargill to call tomorrow and we will send the plans for the Crowley house off to Town Engineer Ray Korber.

IV. NEW BUSINESS

- A. 6:00 PM – The Board of Selectmen is seeking comments from the Planning Board about a proposal to sell town property known as Tax Map 116, Lot 043.1 on Kanc Rec Road (currently leased to Alex Ray for the use as a parking lot for his business known as “The Common Man Restaurant”). Having adopted RSA 41:14-a, the Board of Selectmen has the authority to acquire or sell land, buildings, or both, provided, however, they shall first submit any such proposed acquisition or sale to the planning board for review and recommendation.
- B. 6:00 PM – Discuss how to calculate dwelling units for large developments with multiple phases and amendments. **WORK SESSION** – no public comments.

Robinson said that part of the parking lot at the Common Man Restaurant is technically on Town land. The Town signed a lease with Alex Ray way back when Alex Ray built the Common Man Restaurant to use the town land for his parking area. At some point the town records show that the Town offered to sell Alex Ray that piece of land for a relatively low price. It was decided that Alex Ray would rather lease the land than buy it. The town leased the land to him for years for the cost of the taxes on the land. So really there was no capital cost to Mr. Ray. The amount of the lease payment was just what the taxes would have been if it had been a privately owned parcel. Robinson said he forgot which year the Town changed that. In 2012 the Board of Selectmen looked at the situation and said that this is not fair. Every other restaurant that owns their land has the capital cost of buying it plus they pay taxes on the land. The Town had the land appraised. The land was appraised for \$136,000. The Town charged a rent based on a fair cap rate of a \$136,000 piece of land. The Town had suggested at the time that it might be worth it for Mr. Ray to buy the property outright and own it. Mr. Ray has given this some thought and decided he would like to do that.

Robinson said that Mr. Ray was looking to negotiate the price or apply some back rent. The Board of Selectmen said “No”. The land was appraised at \$136,000 and it is well worth the money. The Board of Selectmen said they would like to sell the land to him. Could we sell it to someone else? Possibly. The land is what Robinson said he would consider an undesirable piece of land for much else because it abuts the parking lot. The Common Man Restaurant’s dumpster is on Town property. Where trucks come in to unload is on Town property. Propane tanks are on Town property as well as numerous parking spaces. If the Town was ever to try and do something else with that piece of land, the Town would need to put up some sort of natural buffer zone with trees and shrubs just to make it somewhat esthetic. The land is not a real desirable spot for a duplex. There are 0.8 acres. A duplex would fit on the property, but not much more than that. Robinson said he is not sure that someone would put \$136,000 into a land value knowing that they would have to do significant site work to put a decent buffer zone and then build a duplex on it. The Selectmen thought that the Town has a company in town that is successful, providing approximately \$750,000 of annual payroll in this Town. The Town wants to encourage that by selling the land to Mr. Ray and not someone that is going to do something different with the land.

Chair Spanos asked if any of those parking spaces had been allocated for the Common Man Restaurant. Bont said, “Yes”. Bont said that in the file there are plans and parking spaces are shown on the Town lot. The ZBA did approve a request for a Special Exception so that the Town could lease the lot to Mr. Ray. It did not appear that there was a separate subdivision or boundary line adjustment for that lot, but then she could not guarantee that she found all of the records for that lot.

Hettinger said that the Common Man is a very clean well managed business. The business does help the Town through employment. Mr. Ray does need that space for parking on busy weekends. Hettinger thinks that selling the lot to Mr. Ray is the right thing to do.

Chair Spanos asked if the Town obtained an updated appraisal. Town Manager/Planner Burbank said that the appraisal was done last year, so it is pretty current.

Strickon jokingly said she was thinking about buying the lot herself.

Bont said there were indications in the files that other people were interested in purchasing the lot. Robinson said that when the Town was going to lease it to Alex Ray, the elder Don Landry was interested in it.

Hettinger said Alex Ray owns the lot on the other side of the Town lot. If the property was sold to someone else, Alex Ray would turn his other lot into parking. Hettinger did not think the Town would want parking there as it would make the entrance to Forest Ridge look awful. Hettinger said that the way the Common Man is run now looks pretty nice.

Chair Spanos said if Mr. Ray somehow lost access to this parcel all that parking would be gone.

Town Manager/Planner Burbank said that after this meeting, the Selectmen would schedule two public hearings. If the Selectmen choose to go forward, they would have to make a choice of coming back to the Planning Board to subdivide or proceed to a sale as a lot line adjustment which the Common Man would have to pay for and simultaneously write a check for the property. The property needs to be legally separated and there are two methods that the board could choose to use.

Motion to open the public comment.

Motion: OJ Robinson Second: Ron Beard All in Favor. (5-0)

Myles Moran was in favor of the sale of the property to the Common Man.

Motion to close public comment.

Motion: John Hettinger Second: OJ Robinson All in Favor. (5-0)

Motion that the Planning Board does not have any objections to the sale of Map 116 Lot 43.1 to Alex Ray of the Common Man.

Motion: John Hettinger Second: Paula Strickon All in Favor: (5-0)

Robinson stated that it is worded in the RSA that the Select Board needs the recommendation of the Planning Board.

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.

Bont explained how the development of South Peak Resort came about over time. She and Planning Assistant Wendy Tanner have looked at the many Notices of Decision, and Site Plan approvals in an effort to figure out:

- How many total dwelling units were originally approved for the South Peak Resort development;
- How many dwelling units are currently approved and developed; and
- How many dwelling units are left to be approved and developed on the remaining land.

Hettinger asked whether Bont and Tanner were going by a particular drawing and not the original contracts. Bont and Tanner said they used the original contracts to create the drawing.

Bont explained that as each of the phases or projects came before the Planning Board, a certain number of dwelling units were approved. Their goal was to calculate how many dwelling units were left to develop at the South Peak Resort.

- **South Peak Resort Phase I:**
 - Approved 68 single family homes.
 - 4 lots (or 2 pairs of two lots each) were merged into two lots and one lot was used for a pumping station for Loon Mountain (subtract 3 lots).
 - That left 65 lots that would be developed for single family homes or dwelling units in Phase I.
- **Pemi River Cabins:**
 - Approved 36 lots for single family homes. None of these lots have been sold and are still owned by CVRI South Peak TRS, Inc. One of the conditions of the Site Plan Review was that the lots could not be sold until the roads and infrastructure were completed.
- **Mountain Homes at South Peak:**
 - Approved 5 lots for single family homes. Some of these lots are very small - 9,147.6 square feet. These lots have not been sold and are still owned by CVRI South Peak TRS, Inc.
- **Crooked Mountain Woods Phase II:**
 - Approved 26 lots for single family homes. These lots are owned by CVRI South Peak TRS, Inc.
- **Crooked Mountain Woods Phase III:**
 - Application for 27 additional lots for single family homes was withdrawn.
- **Riverside Terrace:**
 - Approved 176 dwelling units: This approval was originally for 22 buildings, each with 8 units, for a total of 176 units. Only 5 buildings were built, for a total of 40 units. The land where the other 17 buildings were supposed to be built was then designated for single family homes.
- **Timberline Village Condominiums:**
 - Approved a building that started out being called “H1” and then was renamed “Timberline Village Condominiums” that was approved with 63 condominium units. The ZBA granted a variance to build this building right to the edge of the 0.49 acre lot. This building was not built and all approvals have lapsed.

Riverside Terrace - Tanner explained to the Planning Board there was an area of acreage that was planned for Riverside Terrace (i.e., 22 buildings of 8 units each for a total of 176 units.) These 22 buildings for a total of 176 units was approved, but only 5 of the buildings were built, for a total of 40 units. The remaining land area set aside for Riverside Terrace was then re-subdivided into 36 single family homes for a total of 76 dwelling units on a parcel that was originally subdivided to support 176 dwelling units. There were 8 conditions for this approval. One condition said that no lots could be sold until the infrastructure along South Peak Road was installed and South Peak Road was paved.

Bont asked the Planning Board to clarify. If the developer takes the additional units that were scrapped (176-40=136) off the list and substitutes in the 36 single family homes, does the developer still have the right to put all those scrapped 100 dwelling units (136-36=100) somewhere else on the property?

The question to the Planning Board was: if the property was originally subdivided for 176 dwelling units and they only built 76 dwelling units, does that drop the total of their original Master Plan by 100 units?

Chair Spanos asked how many acres the site was. The exact acreage was unknown but Tanner estimated the starting acreage to be approximately 350 acres. Chair Spanos said that only the concept was approved; each individual development within the overall project could change.

The concern was that if the current events continue and more single family lots are created, there may be a small amount of land left to support a large number of units at the end of the project.

OJ Robinson said that the developer still must abide by the other Town regulations. For example, the developer could not build a 20 story building. There must still be a specific amount of open space for each unit. The erosion and stormwater runoff issues must be addressed.

Hettinger mentioned that in the original plans there was going to be a giant hotel and sports complex on the lot. Many people who bought property were not happy about the design.

Town Manager/Planner Burbank said that at least one of the people interested in purchasing this property has told him that if they purchase the property they would plan to build at least two hotels on the other side of the J.E. Henry Bridge.

Hettinger said that the ski lift from RiverWalk was going to cross the East Branch Pemigewasset River and attach to the lift from the hotel on the other side of the river.

Town Manager/Planner Burbank said that a site is being prepped for the base of the lift at RiverWalk. Town Manager/Planner Burbank said that the numbers that they are approved to build in the South Peak development is the final number, and no changes will be made to that number.

Tanner explained that the original agreement was for 879 dwelling units. If the developer was able to acquire the "Hallsey property" that number would go to 1,018 dwelling units. The Hallsey property was acquired, so the Town will use the number of 1,018 total dwelling units as a starting number.

Chair Spanos said that the intent was to keep enough green space within the entire acreage to support that number of dwelling units. Chair Spanos said that the density cannot change.

OJ Robinson asked if it would be appropriate, if someone new comes in and purchases the property, to ask the new owners to submit a new Master Plan for the remaining dwelling units.

Tanner said that all the current approvals have expired.

Town Manager/Planner Burbank said that a new developer might want to submit their own Master Plan for the property.

OJ Robinson asked how long a Master Plan should last. The current developer created a Master Plan. Then three or four of the sections in the Master Plan do not agree with what the developer actually did on the property.

Chair Spanos said that the concept was approved. The developer had the right to reconfigure within that Master Plan as time went on.

Hettinger said that in the beginning the developer stated that they expected the entire property to be developed in 10 or 12 years.

Town Manager/Planner Burbank said that we do not need to drag this out any further, if any other projects come in for the development they will come before the Planning Board and be handled accordingly. We are going to try and obtain a complete copy of the Master Plan.

VI. ADJOURNMENT

Motion to adjourn at 7:10 PM

Motion: Ron Beard

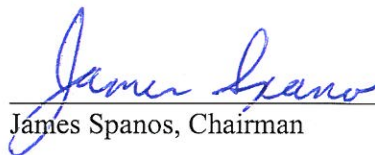
Second: John Hettinger

All in favor: (5-0)

Respectfully submitted,

Wendy Tanner,
Planning and Zoning Recorder

Date Approved: 5 / 11/ 2016



James Spanos, Chairman