# LINCOLN PLANNING BOARD REGULAR MEETING MINUTES TUESDAY, AUGUST 14, 2013 – 6:00PM LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH

**APPROVED** 

Present: Chair R. Patrick Romprey, Vice-Chairman Jim Spanos, Clerk John Hettinger, Paula

Strickon, Selectman OJ Robinson, Norman Belanger (alternate)

Members Excused: Taylor Beaudin (alternate)

Staff Present: Planning and Zoning Administrative Assistant Carole Bont, and Town Manager

& Town Planner, Alfred "Butch" Burbank

**Guests:** Randy Farwell, representing Alpine Adventures, and OJ Robinson who stepped down from the Planning Board to represent Whales' Tale Waterpark. (In early August 2013, the two businesses announced that Whale's Tale Waterpark and Alpine Adventures had merged.)

### I. CALL TO ORDER: by Chairman Pat Romprey at 6:00 P.M.

Chair Pat Romprey called the meeting to order. Taylor Beaudin (alternate) was excused. Jim Spanos arrived a short while later.

### II. CONSIDERATION OF DRAFT MEETING MINUTES FROM:

• July 14, 2013

The Board agreed to move consideration of the minutes until later in the meeting.

Motion to move consideration of the minutes until later in the meeting.

Motion: Hettinger. Second: Robinson. Motion carried (3-0).

#### III. NEW BUSINESS

Robinson stepped down from his seat at the table as a Planning Board Member and recused himself and went to sit in the audience. Robinson is an owner of Whale's Tale Water Park which recently merged with Alpine Adventures.

A. Noise and Hours Complaint from Donna and David Thompson (abutters – 11 LaBrecque Street, Map 112, Lot 057) about the noise and the hours of operation for Alpine Adventures located at 41 Main Street (Map 112 Lot 052), 43 Main Street (Map 112, Lot 053) and 45 Main Street (Map 112 Lot 054).

Donna and David Thompson who live at 11 LaBrecque Street (Map 112, Lot 057) wrote two letters of complaint to the Planning Board. She did not appear in person. (The two letters are attached to these minutes.)

The complaints are as follows:

Noise: The Thompsons are direct abutters to Alpine Adventures. Their backyard is directly behind the The BigAirBag® Stuntzone & Collosus Ramp in the adventure park. The BigAirBag® Stuntzone & Collosus Ramp is comprised of a 40 foot three-story tower, a ramp and a story-high air bag. The participants grab what looks to be a large black inner tube. They climb to the top of the tower with the inner tube. At the top of the tower is the top end of a very large ramp that looks like a ski jump. The participants sit down in the inner tube and travel down the ramp and then back up the ramp to the end of the ramp where they are launched into the air and they travel in an arc peaking at about 3 stories above the ground and then they free fall about two stories down onto the twenty foot high enormous air mattress. The noise associated with the Alpine Adventures includes "constant noise", particularly high-pitched screaming by enthusiastic participants added to the zipping sound of the inner tubes on the plastic end of the ramp culminating in the constant noise of the BigAirBag®, each time a participant lands after they "tube down the New Colossus Stunt Ramp and soar through the air like Shaun White into a giant air bag" advertised as "a quick fun way to get that adrenaline boost and prepare for the challenges of Thrillsville" or just "take a few runs to get your heart racing for the day – better than a copy of coffee or an energy drink". [Advertising from the Alpine Adventure Website.] This happens seven days per week all summer long and on the weekends. According to the Thompsons, they can no longer "sit in [their] own backyard and have a conversation with company" because the screaming and airbag noise is so loud. Mrs. Thompson said the decibel levels generally range from 49 to 69.

In addition, one of the guides is very "loud" and uses a megaphone to shout encouragement to the participants. There also is a siren on top of one of the attractions that serves as a reward for the participants who reach the top.

The problem of noise has been exacerbated since the "ski jump" (The BigAirBag® Stuntzone & Collosus Ramp) went in, because the excessive noise used to be concentrated in the front of the Alpine Adventures property, but now the adventures have expanded to the back of the property where the Thompson house and three other residential neighbor's houses are located.

Lack of privacy: The Thompsons can no longer sit in their backyard or on their back porch and have any privacy" during the season of operation. This is because the Alpine Adventure participants can look down into their backyard, onto their porch and into their bedroom from the top of the tower at the top of the ramp where they wait to launch on the tube.

**Profanity:** She also complained about profanity. When the participants are using bad language she calls the police department. When they call the police it seems that the noise level increases in response.

Hours of Operation: Alpine Adventures was approved to be open from 10 am to 5pm. They have been staying open until 6:00 pm.

### Discussion:

### Noise

- 1. The Board discussed the conditions of the original 2003 approval which were: "The projects noise levels will not disturb the tranquility of the district."
- 2. In January 27, 2009, the Planning Board said: "The projects lighting will and noise levels will not disturb the tranquility of the district. The attraction will be utilized during normal business hours. No Lighting."
- 3. Everyone who was involved who lived in the residential area were at the hearings and all of them said they did not object to this being built, however, that was before the more exciting attractions were added. Now there is a ramp like a ski jump and they hitting the air pillow and the screaming it is more of a thrill ride.
- 4. Alpine Adventures started out with a simple rope course, but they have expanded greatly and they now have a lot more going on there right now. Everything else used to be off site. The Thompsons are now retired and are home during the day now more than they were before back in 2003 when Alpine Adventures first started.
- 5. According to Robinson, the noise entails when the tube goes down the slide there are two different surfaces that are on that slide. The top part of the ramp surface is carpet-like so it does not make much noise, but then as you get into the bowl part of the ramp the surface is a harder plastic material so the tube moves faster and the noise goes "brrrrrrrrrp, brrrrrrrrp, brrrrrrrrp, Robinson did not consider it loud. It is does not inhibit conversation of people sitting on the deck of the ride.
- 6. Mrs. Thompson is more concerned with the screaming and the big air bag noise. Screaming is not predictable. Once you hear the beginning of the noise of the ramp you can tell yourself, "I know what is coming." But random screaming is not predictable. Robinson and Farwell did not think there was a problem with people using vulgar language so much as it was more hooting and hollering type of noise.
- 7. Last Saturday was the busiest day that Alpine Adventures has experienced since its inception. Robinson worked the top of that ramp for the last 1½ 2 hours from a little after 3:00 pm and ended a little after 5:00 pm. There was a sporadic stream of people of 10-20 people. They get three rides each. It was not an all-day thing. It was on and off.

[20 people X 3 rides each = 60 riders in two hours = 1 rider every two minutes.]

8. A group of 10 or 12 people come in and they do three rides each. The ride stops. The guide/attendant goes down the tower and waits on the ground until there is another new

group ready to come in. Generally visitors use the aerials (Thrillsville Aerial Adventure Park) first and then they use the jump (BigAirBag©Stunt Zone & Collosus Ramp) so it is not like it is <u>all</u> day, but it is throughout the day for periods of time. Taking ten people for three rides each – that is at least 30-40 minutes when it is nonstop.

### **Hours**

Because of the many different references to hours in the file, it was difficult to determine what the actual approved hours were supposed to be.

- 1. Alpine Adventures started out with hours 9:00 am to 5:00 pm and somehow they ended up with hours of 10:00 am to 6:00 pm. They were not supposed to have anything after 5:00 pm.
- 2. Planning Board minutes from January 27, 2009, say: "The projects lighting will and noise levels will not disturb the tranquility of the district. The attraction will be utilized during normal business hours. No Lighting." What are "normal business hours"?
- 3. ZBA minutes from April 23, 2009 say: "Member Bishop asked what the hours of operation were going to be for the proposed business. Mr. Farwell stated it would be from 9-5pm."
- 4. In the Planning Board minutes from June 10, 2009, John Hettinger asked what the noise level was going to be with screaming and things like that. It was noted the project would be open from 9-6pm so the noise would not impact anyone and there would be no additional lighting. (See page 2 of 6).
- 5. In another place in the file a document says that the hours of operation will be "daylight only". It doesn't get dark until 8:30 pm in the summer. This is not what they intended.
- 6. Mrs. Thompson asked the Planning Board to make sure that it is only open from 10 am to 5pm only.
- 7. Whale's Tale merged with Alpine Adventures. They are one operation now. Robinson from Whale's Tale was under the impression that 6:00 pm was the time that they were allowed to be open and operating. He understood they could stay open until 6:00 pm and they had every intention of doing so. Randy Farwell has been operating until 6:00 pm on weekends, but generally midweek it is either 5:00 pm or 5:30 pm.
- 8. According to Farwell, the offices of Alpine Adventures in town are open 10 am to 6 pm. The rides out back in Thrillsville Aerial Adventure Park and The BigAirBag® Stuntzone & Collosus Ramp "Thrillsville" are open from 10 am to 6 pm. Donna Thompson came over the other day to tell Mr. Farwell that he was supposed to be open only until 5:00 pm. He wasn't there when she originally came over. Farwell said he thought it was supposed to be 6:00 pm. They had been shutting down at 6:00 pm. So he went over to see her. She showed him a copy of the original approval. He apologized and he has been shutting

down at 5:00 pm. According to Farwell, they are not open seven days per week. They are closed two days per week. They are closed for most of the winter. In August they are busy. He compared his operation to the Hobo Railroad. He said that he can hear that train horn going 24-7.

### Discussion about Possible Mitigation:

- 1. The Planning Board reviewed the layout of the park on the Site Plan Map from December of 2003.
- 2. The owners were asked if there was any way these attractions could be located on the other side of the property. "That attraction is not "wicked moveable". It is a three story building. There was not a separate plan put in for that slide. It was considered to be part of the rope park. The Planning Board waived the site plan review. The site plan approval was for this type of use and that one structure was built with a building permit subsequent to this. The tower with the ramp received the building permit. There was no mention of the airbag.

### Are Other Neighbors Also Bothered?

According to Donna Thompson, the Town has received other complaints from at least one of her residential neighbors in the past (Angwin), but now her neighbors are reluctant to actually complain to the Town or to Mr. Farwell. They complain to the Thompsons instead.

[On the Site Plan Approval Map, the neighbors were:

- 1. Belzemire Dallaire, now Denise & Diane Angwin 7 LaBrecque Street (Map 112 L056)
- 2. Patrick F. & Velma J. Gagne 15 LaBrecque Street (Map 112 Lot 058)
- 3. Howard & Lucille Champagne, now James Champagne and Lisa Minyard 28 West Street (Map 112, Lot 044)
- 4. Ashok Patel 6 West Street (Map 112, Lot 049)]

The Planning Board reminded Farwell that one of the issues when he first came in initially was – is there going to be any possible noise and what is going to be done to mitigate the noise. Now we have a complaint.

The Planning Board reviewed the list going down through the list of complaints with Mr. Farwell and requested that Mr. Farwell act like a good neighbor.

- 1. <u>Noise:</u> "Screaming off slide" and "loud megaphone and sirens". When did they stop using the megaphone? Farwell asserted that although he believes that he had every right to use the megaphone and the siren he stopped using them at Mrs. Thompson's request.
  - a. She complained of a "loud guide". The two part complaint is about Andy who is one of their best employees. He is a just a very influential, charismatic,

- encouraging guy that says stuff like, "Good job, Billy!" Farwell will speak with him and make him tone it down, but that is a double-edged sword.
- b. She complained about a siren. That is the megaphone. It is a handheld megaphone with a siren option. One of the options is to put a siren on when they climb to the top of the tower, if they made it, they can turn it on it is kind of a reward for making it. Try to work with her. You have such a short season.
- c. Mr. Farwell agreed to discourage use of the megaphone unless it is a safety issue. The megaphone is really there for safety reasons. If someone is having a hard time and we need to give him instructions. That is what the megaphone is supposed to be for.
- d. The Planning Board discussed the foul language. If people at his business are using foul language Randy is going to be the first guy to want to get rid of them. Alpine Adventures is a family based establishment. They should discourage profanity. They could put more signage. Presently they have a sign that says, "Please don't..."
- e. How many people are there on a given day at any one time?

  There is only four sessions with 15 people maximum per session. The schedule is:
  - 1. 11:30 am
  - 2. 1:00 pm
  - 3. 2:30 pm and
  - 4. 4:00 pm.

[Note: On a full capacity day that means 15 people X 4 sessions = 60 people. 60 people X 3 rides each = 180 rides down the ramp in 5.5 hours (11:30 am - 5:00 pm) = 1 rider every 1.83 minutes.]

The number of visitors is also limited by their parking. Alpine Adventure only has room to park so many cars. The zip lines are a separate activity done off site.

- f. Would sound screening help?
  - Robinson said there is a fair amount of natural sound screening. Mrs. Thompson complained about people looking down into her yard. He was up on top of the tower for several hours. People were not paying attention to her yard. They are watching people go down the ramp. In order to see her yard he would have to peer through the trees. Farwell said he purposely left a lot of those trees back there so the ramp would blend in and provides shade. He said that in the beginning he offered to hang a privacy screen.
- 2. <u>Hours:</u> The Planning Board asked if Mrs. Thompson had given any indication what she wanted Mr. Farwell to do?
  - a. Farwell said he went over and spoke to Mrs. Thompson on her porch about the issue of staying open until 5:00 pm versus 6:00 pm. He said he was under the impression that his approval was for 6:00 pm. When she brought to his attention a week or so ago that it was indeed 5:00 pm, he acknowledged she was right. Now they limit the 4:00 pm ride so that people are done by 5:00 pm.
  - b. The Planning Board suggested that Mr. Farwell give Mrs. Thompson a copy of their schedule so she could see what days they were closed so she could make her backyard plans around when your people are not there. As soon as school starts

in three weeks business will drop off. Saturday night it will be fairly busy, but during the week it will be basically nonexistent.

Town Manager Burbank and Bont will prepare a letter to Mrs. Thompson telling her about our meeting with Mr. Farwell and what his response was.

OJ Robinson left the audience as a member of the public and was re-seated at the Planning Board table as a Planning Board member.

- B. Review List of Certified Building Inspectors
  - 1. Review a Model RFP for hiring a third party inspector subcontractor
  - 2. What is the cost of hiring a third party inspector?
- C. Should Lincoln adopt of RSA 155-A? If so, should Lincoln limit its application to a certain size or commercial property?

These subjects are interrelated and the Board discussed them together.

Town Manager Burbank asked to speak to the issue about whether the Planning Board should recommend the adoption of RSA 155-A or not and whether the Planning Board should wait and reconsider this issue at some time in the future.

After talking with the Fire Marshall and doing some research and looking at where the Planning Board is going and some projects that recently came in, Burbank feels strongly at this time that the Planning Board and the Town have already moved in a good direction with requiring third party inspections. We have the necessary forms already in place. Burbank recommended that the Planning Board not adopt RSA 155-A at this time.

It is not going to affect what we are doing now which is checking for zoning compliance. The State Building Code is in effect whether the Town adopts RSA 155-A or not. We could ask property owners/applicants for third party inspections for multiple family dwelling greater than two family dwellings. When the Planning Board has to review major developments like Riverwalk and CRVI that are coming that should be a requirement. The town is protected.

We should revisit the issue in three years. Once we get comfortable with the process of requiring the developer to have a third party inspector or the contractors sign a Construction Control Affidavit and things are working okay then the Planning Board should consider adopting RSA 155-A.

Burbank reported that he spoke with the Fire Marshall Bill Degnan. Degnan said, "It doesn't matter to us. But as soon as you adopt RSA 155-A, you are now obligated to have an inspection program. We are here no matter what, but you are really are rolling the dice." Without adopting RSA 155-A the Town of Lincoln can still tell a developer like Dennis Ducharme, "You can go to the Fire Marshall's Office. They will offer the full inspection process from permit to inspection." "There is a fee. You may or may not like it. This service is going to be competitive with anything else. The developer can go that route. The Fire Marshall's Office can provide that service.

We would have to find a building inspector. Everything that has come in lately, either hasn't been filed properly or not recorded. We have a lot of work. So if the Town adopted RSA 155-A it would create a ton more work.

### When you referred to building inspectors, were you referring to hiring a building inspector under RSA 155-A?

Yes. You could hire somebody or we could try to find a person who is willing to be subcontractor. There are actually very few people who are actually certified building inspectors and most of them are located in the southern part of the state. Most of them appear to be municipal building inspectors. It would be a long trip to moonlight in the Town of Lincoln as a building inspector. The developer has the option of working with the architects and the engineers. For example, Hoyle, Tanner & Associates, might sign on with Dennis Ducharme for InnSeasons to do the third party inspections. They are either going to do it in house or hire a third party. It is their choice; it is their dime. Our Construction Control Affidavit will be signed.

### Does adopting or not adopting RSA 155-A open us up to a take-over by the State Fire Marshall's office?

No. They have the authority over two-family residences up to commercial buildings anyway. They have the authority to come in any time they want. We have no control over that. They are not going to intervene unilaterally. They are only going to come in if there is a complaint or a death. They are not going to come in and take over if we don't adopt RSA 155-A. The State Fire Marshall said "Given what you guys are doing, we don't care one way or the other, but you might want to consider not." Although he seemed to be complaining that we were not handling these things correctly, he isn't really complaining. There are a number of towns – 35 or 39 towns that do not do it. He has to be more vigilant because he statutorily is responsible for multifamily dwellings with more than two housing units and commercial buildings so statutorily if a death or a serious injury occurs then they are it. It more than piques their interest. They have to pay more attention because that is their responsibility.

#### What would it cost the town if we had to hire a building inspector:

Romprey ran some numbers to see what it might cost the town. If the Town adopted RSA 155-A and we hired an inspector he estimates that the Town would spend about \$130,000 per year. That would include benefits and mileage. The town would assume more liability if we adopted RSA 155-A.

Our site plan regulations read that if we want the applicant to hire an expert we can. Because of the intricacies of this project we will require them to have third party review of the entire project. When we review the plans we just have not required it for the inspection part of the process in the past. We will now require that. It is mandatory.

Their choice to hire someone. For example, Hoyle, Tanner & Associates are choosing to do the third party inspection in house for the InnSeasons Hotel. Dennis Ducharme is accepting

additional fees which he is glad to do. This means that Hoyle, Tanner & Associates are going to want to be onsite to see what is going in. So for them, the architect-engineers will sign off, but that is exactly what we want. That is a huge safety net for us and him. The developer should like it too because he wants to ensure that he has a good product.

Our intention overall is to make this process as cost efficient for the Town as possible – with no cost to the town, if possible – and still have liability protection for both the Town and the owner. That is our ultimate goal.

### What are the pros and cons of adopting RSA 155-A?

The upside is that the Town would be in charge of its own destiny, but not without a financial cost. You have your own building inspector. Basically you are going out and ensuring for your town residents and taxpayers that things are being built according to the architectural plans and the engineering plans and that enforcement of the plans is being in house.

The down side is the cost. The figure of \$130,000 may be low. The building inspector has to be trained and certified. We would have to add all of the costs associated keeping that up. The inspector is not going to pay for all of the training and certification on his own.

Motion that the Planning Board Will Not to Adopt RSA 155-A.

Motion:

Robinson.

Second:

Strickon.

Motion carries unanimously by all members present and voting (4-0).

D. Discuss State Fire Marshall's offer re: Administering Building Permits and Performing Building Code Inspection for Multi-Family Residences greater than two person residences in size and commercial buildings.

The Planning Board discussed the State Fire Marshall's offer re: Administering Building Permits and Performing Building Code Inspection for Multi-Family Residences greater than two person residences in size and commercial buildings. The Board did not want to bring the State Fire Marshall in to do this.

Burbank shared his conversation with the State Fire Marshall. If a developer wants to query the Fire Marshall's Office to be their third party inspector they can. The Fire Marshall's Office will charge a fee. The developer can decide whether to hire the Fire Marshall's Office or a third party inspector or get all of their contractors to sign off on a Construction Control Affidavit.

The State Fire Marshall's Office does not want to be the building inspectors for all of the thirty-nine towns that did not adopt RSA 155-A. They will respond to complaints. If there is a complaint or if he is requested to do an inspection or there is a death or collapse the State Fire Marshall's Office will come in and slam the hammer down. That is their job. They don't have the staff or the time to come in and "run our town".

If the contractor does not want to hire a third party inspector he can ask the State Fire Marshall's Office to perform the inspection and get something from the State Fire Marshall's Office. The State Fire Marshall's Office has the applications and permits. If asked, they will act as though they were the Town of Lincoln's building inspector for that development only. It is an option to offer our citizens.

We will use the State Fire Marshall's Office as a third party alternative. The Town will offer the State Fire Marshall's Office as an option for a third party inspector to developers, otherwise, the developer will have someone else sign the Construction Control Affidavit before we issue a Land Use Compliance Certificate.

Motion that the Planning Board will <u>NOT</u> invite the State Fire Marshall's Office to come and take over the permitting and inspection of all multi-family residences larger than a two family and all commercial inspections.

Motion:

Robinson.

Second:

Strickon.

Roll Call vote:

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

Motion carries unanimously by all members present (5 - 0).

E. Discuss whether to adopt NH & FBI Criminal History Record Checks for Hawkers & Peddlers – Need an ordinance requiring a background check on individuals applying for licensure.

The Planning Board was asked to pass over this item of the agenda. It was not clear whether the proposed ordinance needed to be handled through the Planning Board or the Board of Selectmen. In the past the Vendor's Ordinance for Licenses were handled strictly through the Board of Selectmen, however, this past year we incorporated the Vendor's Permitting System into the zoning ordinance titled "Land Use Plan Ordinance". Any amendments to the zoning ordinance have go through the Planning Board process for amending the zoning ordinance. The Town Manager forwarded the proposed ordinance to town counsel. Who approves the proposed ordinance? We are waiting for the word from town counsel. We will do what he recommends.

- A. Review Model RFP for Certified Building Inspectors & cost
- B. Discuss State Fire Marshall's offer re: Building Code Inspection.

### The Board Returned to:

II. Consideration of meeting minutes from July 26, 2013.

Motion to approve Minutes from July 26, 2013 as amended.

Motion: Strickon. Second: Hettinger.

Motion carries unanimously by all members present and voting (4-0). Robinson abstained as he

was not present at that meeting.

### IV. OTHER BUSINESS

VII. 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.

There was no public at this time in the meeting.

### VIII. ADJOURNMENT

Motion to Adjourn. Motion: Spanos. Second: Robinson.

Motion carries unanimously by all members present (4-0)

The meeting was adjourned by at 7:15 pm.

Respectfully submitted,

Carole Bont, Planning and Zoning Administrative Assistant

Dated: August 28, 2013

R. Patrick Romprey, Chairman

### RECEIVED

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