

LINCOLN PLANNING BOARD
REGULAR MEETING MINUTES
TUESDAY, JULY 24, 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 Patricia McTeague filling in for Selectman OJ Robinson and Taylor Beaudin (alternate)

Members Excused: Selectman OJ Robinson, and Norman Belanger (alternate).

Members Absent: None.

Staff Present: Planning and Zoning Administrative Assistant Carole Bont, and Town Manager & Town Planner, Alfred “Butch” Burbank

Guests: Paul Beaudin, representing the Lincoln Zoning Board of Adjustment, Rick Kelley, representing Loon Mountain and NCCA (North Country Center for the Arts) and Jean’s Playhouse, Andrew Noyes, representing NCCA (North Country Center for the Arts) and Jean’s Playhouse; and Billy Conn representing Lincoln Trucking and himself.

I. CALL TO ORDER: by Vice-Chairman Jim Spanos at 6:00 P.M.

Chair Pat Romprey called the meeting to order. Selectman OJ Robinson was excused and Selectman Patricia McTeague was seated in his stead. Alternate Norman Belanger was excused.

II. CONSIDERATION OF DRAFT MEETING MINUTES FROM:

- June 26, 2013

The Board discussed the minutes. Bont suggested the first three proposed amendments below. Jim Spanos suggested the fourth amendment. John Hettinger suggested the fifth amendment.

Motion to approve the following amendments to the June 26, 2013, minutes:

1. Page 1, I. Call to Order: by Pat Romprey (not “Jim Spanos”).
2. Page 14, paragraph 2: “Many years ago the State advised...” (not “Sate”)
3. Page 14, paragraph 3: “He has a house already on Lot #1 and would like to...” (not “Lot # would” like to...).
4. Page 7, Question 7, starts with “Ducharme talked to Jimmy Boyle...” but later in the paragraph Boyle is spelled wrong – “Boule” instead of “Boyle”.
5. Page 6, item 4a, last sentence “To address bill Willey’s concern, by running a new service they will be tying in upstream [sic] of the flat spot.” He thinks they meant “downstream” when they said “upstream”. Left as is because that is what he said, however, we are sure they meant “downstream”.

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

Motion: Strickon.

Second: Hettinger.

Motion carries unanimously by all members present and voting (3-0). McTeague abstained as she was not present at that meeting.

III. NEW BUSINESS

A. Paul Beaudin – Concerns About Planning Board’s Granting Jean’s Playhouse A Permit For A Replacement Off Premise Sign As Part Of The Integrated Sign Plan

Paul Beaudin, Chair of the ZBA, expressed his concerns as ZBA Chair that the Planning Board did not have the authority to grant a sign permit to Andrew Noyes on behalf of Jean’s Playhouse for an Off Premise Sign. Beaudin contends that only the ZBA has the authority to grant Jean’s Playhouse a Special Exception and that the Off Premise Sign approved needed a Special Exception from the ZBA.

On May 22, 2013, the Planning Board met and heard an application for an Integrated Sign Plan permit submitted by Andrew Noyes on behalf of Jean’s Playhouse. Jean’s Playhouse is a tourist attraction that needed Offsite Directional Signage. The tourist attraction is not located on the main thoroughfare. Jean’s Playhouse had other Off Premises Signs and was willing to remove two Off Premises signs in exchange for one better Off Premises Sign. The Planning Board approved the Off Premise Sign and the removal of the other two signs as part of an Integrated Sign Plan.

In Beaudin’s opinion, the Off Premise Sign was prohibited even though it was part of an Integrated Sign Plan. In another section of the Sign Ordinance that is part of the Land Use Plan Ordinance, it says Off Premise Signs are prohibited except by special exception.

Furthermore, Beaudin was concerned that Jean’s Playhouse has three A-frame portable Off Premise Signs already. According to Beaudin, A-frame signs are supposed to be within 25 feet of the buildings.

According to Beaudin, Jean’s Playhouse “probably would have gotten their way” from the ZBA, however, he was concerned that last year Clark’s Trading Post was forced to come in before the ZBA in a similar situation. Clark’s had a lot of different Off Premise Signs – some perhaps permitted, some perhaps not – arguably all grandfathered. They could not find permits for any of the Off Premise Signs, however, many signs had been in existence for a very long time. Beaudin expressed his concerns: “If you go to the point of the Planning Board approving Off Premise signs the Off Premise Signs could pop up everywhere. That is why they are supposed to go through the ZBA.”

Rick Kelley objected to Beaudin’s concerns about the A-frame Off Premise Signs referred to. According to Kelley, the A-frames were grandfathered years ago before the ordinance changed. The A-frame signs were grandfathered as far back as when Beaudin was on the Planning Board.

According to Chair Romprey, the Lincoln Planning Board made changes in the sign ordinance by creating the section allowing an Integrated Sign Plan so Lincoln could cut down on the amount

of red tape and so Lincoln could get some better signs. The Jean's Playhouse sign was permitted under the Integrated Sign portion of the ordinance. The Planning Board did not grant a special exception, but did give approval for the Off Premise Sign as part of the Integrated Sign Plan. Beaudin insisted that approval for any Off Premise Sign still requires a special exception from the ZBA.

According to Town Manager Burbank, Town Counsel was asked to look at the Integrated Sign Plan portion of the sign ordinance to see if the proposed sign could be approved under that section. Town Counsel did not have an issue with allowing the sign as part of an Integrated Sign Plan, however, Town Counsel was not also directed to review the issue with the other section of the ordinance Beaudin was referring to. Town Manager received the legal opinion verbally, not in writing.

Beaudin discussed his disagreement with the Planning Board's interpretation of the Ordinance with Burbank prior to the Planning Board meeting. Town Manager/Town Planner Burbank advised Beaudin, as chair of the ZBA, to take up his disagreement directly with the Planning Board because the disagreement was between two town boards.

Beaudin requested a written legal opinion from the town attorney. After much discussion the Planning Board agreed to let him get a written opinion.

The seemingly conflicting parts of the ordinance say:

Section E:

q. Off Premises Sign
i. Description: A sign that serves as advertising for a business, and that is not located on property of the business that is being advertised. ii. Standards: Off Premises Signs are prohibited, except by special exception as provided in Article VIII of this Ordinance.
r. Off Premises Directional Sign
i. Description: A sign for the purpose of directing the general public to a business, activity, service or community event that is not located on property of the business providing the direction. ii. Standards: Off Premises Directional Signs are not allowed, except real estate direction signs (See Art. VI-B, E, 10, w – Real Estate Off Premises Direction Sign) or by special exception as provided in Article VIII of this Ordinance.

Section F:

“Section F – INTEGRATED SIGN PLAN.

1. PURPOSE.

Due to the fact that the town has multiple occupancy properties, such as office parks and shopping centers; as well as unconventional development, such as tourist attractions; have special sign needs, this section sets out an alternative procedure for approval of signs on these properties. It provides the Planning Board additional flexibility as to the size and number of signs on property within the General Use (GU) and the Village Center (VC) Zones.”

4. REQUIREMENT FLEXIBILITY.

As part of an integrated sign plan the Planning Board may permit up to fifty percent (50%) more signs or up to fifty percent (50%) more aggregate footage than required by this Ordinance within the General Use (GU) and the Village Center (VC) Zones.

Beaudin reiterated that he was not trying to stop Jean's Playhouse from getting their sign or having their sign located where the Planning Board approved it. He just wanted to make it clear that the Planning Board does not have the authority to give a permit for an off premises sign whether it is part of an Integrated Sign Plan or not. "All I want to do is make sure that Jean's Playhouse has the right approval for the right sign."

The Planning Board told Jean's Playhouse they could keep their sign until the Town had the opportunity to clear things up with town counsel.

The Planning Board members understood that the amended portion of the sign ordinance in the Integrated Sign Section allowed this kind of flexibility in signage. The Planning Board does not think that the ZBA has to make that determination. If the Ordinance does not allow the Planning Board to do this, the Planning Board will look into making it possible to do so. The intent of amendments was to make the process easier and allow the Planning Board more flexibility to allow people to upgrade their signs.

B. Non-Public Session per RSA 91-A:3, II(e)

Motion to enter Nonpublic Session.

Motion: Spanos.

Second: Strickon.

Specific Statutory Reason cited as foundation for the nonpublic session:

RSA 91-A:3, II(e) *Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against this board or any subdivision thereof, or against any member thereof because of his or her membership therein, until the claim or litigation has been fully adjudicated or otherwise settled*

Roll Call vote to enter nonpublic session:	Pat Romprey	Yes
	James Spanos	Yes
	Patricia McTeague	Yes
	John Hettinger	Yes
	Paula Strickon	Yes

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

Entered nonpublic session at 6:28 p.m.

Other persons present during nonpublic session: Town Manager Butch Burbank, Planning and Zoning Administrative Assistant Carole Bont, and Planning Board Alternate Taylor Beaudin.

Description of matters discussed and final decisions made:

Town Manager Burbank informed the Board that the Town of Lincoln has been served in a lawsuit filed against the Town of Lincoln by Russ Cooley in connection with the levee. The Town has also received NH RSA 91-A requests – requests for information under the Right To Know Law. The plaintiff is alleging damages caused by public officials prior to the present sitting planning board.

The Town Manager talked about the current status of the levee in general terms. He talked about the allegations in general terms. Plaintiff Russ Cooley alleges he has suffered irreversible damages due to loss of sales. Cooley alleges that the town's lack of maintenance of the levee has caused him loss of profits. Cooley further alleges that the potential rights-of-way are affecting the sale of his property because part of his property is going to have to be subject to Town rights-of-way so that the Town can maintain the levee. Cooley also alleges that the rights-of-way to maintain the levee are going to take up saleable waterfront property, causing him further damages. The Plaintiff is looking at town officials who knowingly ordered maintenance of the levee to cease or to be cut.

No decisions were made. No roll call vote was taken to seal minutes.

Motion to leave nonpublic session and return to public session at 6:36pm.

Motion: Spanos.

Second: Hettinger.

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

Public session reconvened at 6:37 p.m.

C. Review List of Certified Building Inspectors & Discussion of State Fire Marshall's Offer to Perform NH State Building Code Inspection and Enforcement of the Building Code In General

Certified Building Inspectors:

The Planning Board reviewed the list of NH certified building inspectors – most are from the southern tier. This list of certified building inspectors does not mean they are necessarily looking for side work. Many of them are fully employed by municipalities as municipal Building Inspectors. We don't know if any of these people would be interested in performing third party inspector work for the Town of Lincoln.

What Are The Alternatives To Hiring A Certified Building Inspector?

John Hettinger pointed out that registered engineers and registered architects are not the same as certified building inspectors. The duties of a certified building inspector go beyond the duties and expertise of a regular registered engineer or architects. Engineers and architects have different backgrounds than certified building inspectors. A registered engineer or architect is not necessarily qualified to act as a building inspector. The State does not certify Building Inspectors. The industry itself certifies Building Inspectors. We would be looking for certified building inspectors. The list of Certified Building Inspectors in the State of New Hampshire

includes all of the people who are certified inspectors. If we cannot make a deal with one of them, the State Fire Marshall's Office is our only option.

State Fire Marshall as Building Inspector

In connection with this issue of third party inspectors, the Board reviewed an e-mail the Town received from Matthew LaBonte from the State Fire Marshall's Office. LaBonte is a licensed architect. LaBonte says that Lincoln's moving to third party inspection is the right thing to do. There are only a few towns who have not adopted NH RSA 155-A which enables town to take on the added responsibility of enforcing the New Hampshire State Building Code.

The State is going into the building inspection business for all private multi-family residences larger than a two-family and all commercial development. If Lincoln has the State Marshall's Office as its Building Inspector, the State Fire Marshall's Office will have total authority over multi-family buildings and all commercial buildings. This means the towns will be giving up all control. The State Fire Marshall Office will be heavy-handed by virtue of what they are doing. Their services are not going to be available until after September. If the town goes to a third party inspector, the burden and cost is then shifted to the developer to hire a third party inspector.

Retaining Walls

Retaining walls in connection with single family residences does not fall within the jurisdiction of the State Fire Marshall's Office unless there is the potential that a failure will affect a "public way". Practically speaking, the State Fire Marshall's Office could become involved in just about all of the retaining walls up on Loon Mountain because if they fail, a landslide will generally fall within the public way, potentially impacting pedestrians and motor vehicle drivers.

Any retaining walls in excess of four feet fall within the purview of the State Building Code. If an engineering firm includes a detail in its engineering plans for a four foot retaining wall it falls under the purview under the State Fire Marshall's Office, particularly if it supports a multi-family building or a commercial building. If the wall is holding back earth that should it fail, it would affect a public road or way then the State Fire Marshall's Office has jurisdiction over it.

Construction Control Affidavit

Town Manager discussed having contractors or builders sign a Construction Control Affidavit in order to receive a "Land Use Compliance Certificate". The contractor who constructed 6 Hay Hill Road signed a Construction Control Affidavit. The Town Manager informed the Planning Board that although the Town met its obligation in that instance, in the future, as part of the approval process, if the engineer is going to have to sign off, they are going to want to visit that wall every day to make sure it is being constructed in accordance with the plan. That costs money. According to Matthew LaBonte from the State Fire Marshall's Office, to do it right, retaining walls eat up land. There is no way to put up a proper retaining wall and the proper matting if you try to squeeze a 20,000 square foot on a 30,000 square feet lot.

Should We Adopt RSA 155-A To Enforce The State Building Code?

Consider adoption of RSA 155-A. Should we continue to require developers to hire third party inspectors so the town does not have to hire a full-time inspector?

What If We Do Not Adopt RSA 155-A Or If We Adopt RSA 155-A And Then Fail to Hire A Certified Building Inspector?

Without the adoption of RSA 155-A, all commercial buildings fall under the State Fire Marshall's Office's jurisdiction. The town is pretty well insulated from liability. It is a philosophical issue. What duty of care does the Town have to someone who spends \$1,000,000 or \$100,000 for a home in the Town of Lincoln to assure they are purchasing a safe building? Most towns have adopted State Building Code enforcement and feel they have a moral obligation to make sure homes in their community are safe.

The State Fire Marshall's Office is an available resource. There is no hiring freeze on the State Fire Marshall's Office/department as long as they are charging fees to cover their costs. The State Fire Marshall's Office says, "We are in the building inspection business". Use RiverWalk as an example. We could tell RiverWalk – The State Fire Marshall's office is our building inspector. You go to them to get your building permit. They are going to charge you a fee to review the building as it goes up. They will stamp it as being in compliance with the State Building Code. That is it. They are Lincoln's third party reviewer on their terms.

If Lincoln does nothing to adopt RSA 155-A, then Lincoln can do nothing to ensure that contractors are complying with the State Building Code unless there is a complaint. The Lincoln Fire Chief here is an extension of the State Fire Marshall's Office. If Lincoln's Fire Chief sees an issue then he will contact the State Fire Marshall's Office about it. Without the adoption of the enforcement of the code with RSA 155-A, the commercial buildings fall under the State Fire Marshall's jurisdiction, but the State is not going to act unless there is a complaint.

If we adopt 155-A, then the town does its own thing. For any major project that is a multi-family or commercial they can find a certified building inspector to inspect the building as it goes up.

Which one of these qualifications would ensure the inspector was capable of inspecting retaining walls? A residential or commercial regular building inspector.

Another Collapse of Retaining Walls:

John Hettinger spoke of another collapse of the retaining wall over near 6 Hay Hill Road the other day. Billy Conn asked where the second collapse was located. Hettinger told him "Where you drive down to the very end of the Landings where you can walk through the woods on Serendipity. The collapsed retaining wall is down there on the right just past Hay Hill Road." He does not know if the collapse is the result of the last rain storm. The collapse has been there for about two weeks.

Is the Planning Board going to hold public hearings where the public can be part of the discussion about whether the Town Warrant should include a warrant article to Adopt RSA 155-A to enforce the State Building Code?

Bill Conn asked whether the Planning Board was going to have another discussion where members of the public can talk before the Planning Board votes to recommend the adoption of RSA 155-A to the Town Meeting? Yes.

Is the Planning Board Going to Withdraw Approvals?

Bill Conn also asked, “Are you going to withdraw all of The Landings’ approvals to build? Because if the Planning Board adopts RSA 155-A and requires people to follow the rules for building stone walls then the Landing cannot build anything else up there. They are done.” The Planning Board did not address this question.

Can We Get An RFP to Contract With a Certified Building Inspector?

The Planning Board decided to have come up with an RFP and then send it to everyone on the list of certified building inspectors. The Board wants to develop a realistic idea of the cost and then to review the e-mail from the State Fire Marshall’s Office.

Chair Romprey asked how many Planning Board members wanted the state involved. Most wanted more information. At this time they considered the question would be answered on a case-by-case basis.

Is There a Conflict Of Interest if the Developer Hires a Third Party Inspector?

Lincoln’s Site Plan Review regulations say the Town can hire its own inspectors as needed. The Town can put that cost on the developer. If the developer pays an inspector, is there a conflict of interest? According to the Town Manager, the developer would post a bond for the cost of the inspector. In most places the bill for services would come through the Town. The Town would pay the bill. The Town would seek reimbursement through the bond.

Is there a Conflict of Interest if the Same Firm Acts as a Contractor and as a Third Party Inspector?

According to the Town manager, for the purposes of the inspection, the third party inspector would be paid by the Town and then the Town would look for either prepayment or reimbursement from the developer/owner so there is separation. It will be one expert checking another expert.

Related Tasks for the Next Meeting:

1. Bont will try to find a model RFP for the Planning Board to look at.
2. Bont will try to find out what the cost of hiring a third party inspector is.
3. Should Lincoln use the Construction Control Affidavit for developer to have all contractors and property owners who do their own work sign off?
4. Set up a public meeting on whether to recommend the adoption of RSA 155-A for some time in the near future.

D. **Authorization for Federal Background Checks:** Local police are no longer allowed to use the FBI computers to perform a federal background check. Towns must adopt the NH & FBI Criminal History Record Checks for Hawkers & Peddlers Ordinance. Towns need this ordinance requiring a background check on individuals applying for licensure. The Selectmen or Planning Board will put an Article on the Warrant for 2014. We will run the warrant article language by town counsel.

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- E. **Appointment of Budget Committee Representative to the CIP Committee** Deanna Huot, a member of the Budget Committee, was appointed to the CIP Committee as the Budget Committee representative on the CIP Committee.

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- F. **Whether or Note to Record Site Plan Approvals:** The Planning Board discussed whether or not Site Plans were recorded in the past. Many Site Plans approved by the Planning Board were not recorded in the past. According to Matthew LaBonte of the State Fire Marshall's Office, all Site Plans need to be recorded. When Bont talked to William Richardson at Hoyle & Tanner they say that most towns do not record site plans. The Planning Board was asked whether or not they wanted to direct that Site Plans be recorded.

Motion to record approved Site Plans from now on.

Motion: Spanos.

Second: Hettinger.

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

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.

A. What is the "Legislative Body"?

Paul Beaudin was under the impression that the Board of Selectmen was the "Legislative Body" under certain circumstances. When informed that the "legislative body" is always the Town Meeting, he expressed his concern that the minutes reflect that NH RSA 155-A and RSA 674:51 must be adopted by the "legislative body" and that the "legislative body" is defined as the annual town meeting.

B. Request to Be Appointed to CIP Committee and Change Meetings

Paul Beaudin asked to be appointed to be on the CIP Committee, at large. He was informed that Deanna Huot had been appointed as the Budget Committee member of the CIP Committee. There are no "at large" members of the CIP Committee. Beaudin asked that he either be appointed as a member or he intended to attend all of the meetings. He asked that the committee change the dates and times of the meetings so that he could attend them without missing work hours. He said that he does not like the way things happen on the CIP Committee. Hettinger said Beaudin could attend the meetings as they are public meetings. The meetings are Thursdays from 10 am – 12:00 pm. Beaudin stated that he is a taxpayer and has concerns about "how the CIP is being handled". He asked that the meeting times be changed so that he could attend without missing work. Hettinger responded that Thursday mornings is the best time for staff from the Selectmen's Office who is on the Committee to attend meetings without incurring

overtime. Beaudin said he planned to take Thursdays off to attend the CIP meetings.

VII. ADJOURNMENT:

Motion to Adjourn.

Motion: Strickon.

Second: Spanos.

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

The meeting was adjourned by at 7:24 pm.

Respectfully submitted,

Carole Bont, Planning and Zoning
Administrative Assistant

Dated: August 14, 2013



R. Patrick Romprey, Chairman