

**LINCOLN PLANNING BOARD
REGULAR MEETING MINUTES**

APPROVED

WEDNESDAY, DECEMBER 11, 2013 – 6:00PM

LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH

Present: Vice-Chairman Jim Spanos, Clerk John Hettinger, Selectman OJ Robinson, Taylor Beaudin (alternate), and Norman Belanger (alternate).

Members Excused: Chair R. Patrick Romprey – on vacation; Paula Strickon – injured.

Members Absent: None.

Staff Present: Town Manager Alfred “Butch” Burbank, Planning & Zoning Administrator Carole Bont.

Guests:

- Richard K. Elliott, of 3 Amalia Drive, Nashua, NH 03063 – one of the developers of Forest Ridge and a principal owner of co-applicant Jori Properties, LLC and Lincoln Development c/o John D. Hauser, Manager, c/o Richard K. Elliott, 3 Amalia Drive, Nashua, NH 03063 & Elliott Custom Homes
- Paul Grogan, Facilities Officer for Union Bank, on behalf of Applicant Union Bank at 20 Lower Main St. PO Box 667, Morrisville, Vt. 05661
- David Larsen, Business & Property Manager of Forest Ridge Property Owners Association, representing Forest Ridge Property Owners Association (FRPOA) and also a resident of Forest Ridge and an abutter; Karin Martel, Forest Ridge, 10 Woodsvie Lane, Lincoln, NH 03251, a resident of Forest Ridge and an abutter
- David P. Yager, 57 Flanagan Drive, Framingham MA 01701, second home owner at 10 Hemlock Drive owned by DLNR Family Limited Partnership (Map 121 Lot 007).

I. CALL TO ORDER: by Vice Chairman Jim Spanos at 6:05 P.M.

Vice Chair Jim Spanos called the meeting to order. Both Chair Romprey & Strickon were excused. Alternates Norman Belanger and Taylor Beaudin were appointed to act in their stead.

II. CONSIDERATION OF DRAFT MEETING MINUTES FROM:

- November 13, 2013
- November 26, 2013

Motion to move to postpone approving the minutes until next Planning Board Meeting.

Motion: Robinson.

Second: Hettinger.

Motion carried (4-0).

III. CONTINUING AND OTHER BUSINESS (Staff and Planning Board

Member/Alternates).

Continuation of Public Hearing & Consideration of Application started on Wednesday, October 23, 2013, continued until November 13, 2013, and continued again until December 11, 2013.

A. 6:00 pm. Application for Minor Subdivision - Lot Line Adjustment

- 1. Application (SUB #2013-04)**
- 2. Map 115, Lot 017 and Map 122, Lot 001**
- 3. Address:** M 115, L 017 (Parcel 2, First Ridge) & M 122, L 001 (LO Pollard Road)
- 4. Applicant:** Thomas Hahn of Foreco, LLC
PO Box 597
Rumney, NH 03266
- 5. Owner of M115, L017:** Jori Properties, LLC
John D. Hauser, Manager
c/o Richard K. Elliott
3 Amalia Drive
Nashua, NH 03063
- 6. Owner of M122, L001:** Green Acre Woodlands, Inc.
c/o Robert L. Marcalus, President of Green Acre
Woodlands, Inc.
PO Box 444
Elmwood Park, NJ 07407-0444
- 7. Surveyor:** Sabourn & Tower Surveying and Septic Design, PLLC
1022 Daniel Webster Highway
North Woodstock, NH 03262

Proposal: For Planning Board to Approve an Application for Lot Line Adjustment between 2 Lots– Applicant Hahn proposes a Minor Subdivision (Lot Line Adjustment) between 2 Lots:

1. Tax Map 115, Lot 017 (Parcel 2, Forest Ridge) owned by Jori Properties, LLC;
&
2. Tax Map 122, Lot 001 (LO Pollard Road) owned by Green Acre Woodlands, Inc.
 - a. The sizes of the proposed subdivided lots will be as follows:
 - i. Map 122 Lot 001 will change from 6.35 Acres to 27.35 Acres.
 - ii. Map 115, Lot 017 will change from 154.0 Acres to 133.0 Acres.
 - b. Both adjacent lots are located north of US Route 112, the Kancamagus Highway.
 - c. Map 122, Lot 001 has road frontage on US Route 112, the Kancamagus Highway. Map 115, Lot 017 does not; it has road frontage along Woodland Loop, a private road.
 - d. Map 122 Lot 001 is located in the General Use (GU) Zone. Map 115, Lot 017 is located in the Rural Residential (RR) Zone.
 - e. No new lots are being created.
 - f. No additional streets, utilities or public improvements will be required.

The application was accepted as complete by the Planning Board, a public hearing will be conducted during this meeting or scheduled for a future meeting of the Planning

Board. The Town Attorney asked for additional time to review the materials in connection with this case.

Recusal:

Alternate Planning Board member, Norman Belanger recused himself and sat in the audience. Belanger is a resident of Forest Ridge and an abutter to the lots proposed for a Lot Line Adjustment.

Summary of Proposal by Richard Elliott on Behalf of Jori Properties, LLC:

Richard Elliott, Manager of Jori Properties, LLC ("Jori") spoke in support of the application of Jori and Green Acres Woodlands Inc. ("Green Acres"). Jori and Green Acres came in to ask for a Lot Line Adjustment to move the lot line between Green Acres and Forest Ridge higher up off the highway (US Route 112).

At previous hearings, Town Attorney Peter J. Malia, Jr., had a number of questions concerning Jori's obligations to the Forest Ridge Development and to the Town. What land was involved in Forest Ridge? What land was considered to be open space? What land was not open space? How much open space was required to support the density? At that time Malia did not have enough information to make a recommendation to the Planning Board. Action on the application was postponed for two meetings in order for Attorney for Jori, Heidi J. Barrett-Kitchen from Shaheen & Gordon, P.A., to communicate with Attorney Malia to sort it out.

Attorney Review:

Burbank represented that the matter had been reviewed by Malia and Jori's Attorney. Both attorneys appear confident that the Lot Line Adjustment can take place; however, because no one has a copy of the Master Plan Report from January 1996, the Town needs a new Development Agreement between the Town and Jori Properties. Although there is no legal reason not to approve the Subdivision/Lot Line Adjustment, there are a number of issues that need to be addressed in the context of an updated Development Agreement.

Elliott still wants to give the town a deed for the land under the water tower. In exchange, he would like an easement across the road that is already there so he can access the remaining acreage owned by Jori. Elliott would like to make that easement part of the new Development Agreement. If the Planning Board is willing to grant a conditional lot line adjustment, "after the holidays we will let the attorneys straighten it out and work on it over the winter".

Open Space Calculations:

Hettinger asked about the prior Development Agreement's open space calculations.

Elliott explained his perception of the required open space by showing the planning board a black and white copy of a Forest Ridge map he had made. By Elliott's calculations, based on current town standards there is enough land AFTER the transaction (i.e., transferring the 20.72 acres to Green Acres) to build 200 more units than Jori had already planned to build there. Elliott asserted that no additional open space had been required. According to Elliott, all of the open space that was required was included in each individual subdivision. He directed the Planning Board to look at Forest Gardens and the area colored orangey-red on his map which included:

1. Forest Gardens Phase 2E (14 units);
2. Forest Gardens Phase 2F (26 units);
3. Forest Gardens Phase 2G (16 units); and
4. Forest Gardens Phase 2M (72 units).

According to Elliott, when Jori transferred parts of Forest Ridge property to Forest Gardens, Jori transferred 25 acres of land (colored orange). He calculated the density and the supporting open space this way: Take 24.97 acres at 15,000 square feet per dwelling unit so that would allow Jori to build the 72 units. Every time Jori transferred a piece out, Jori transferred the common land with it to take care of that subdivision. For example, Forest Circle got enough open space within their pocket of development to support that particular subdivision's density. The Mountain View Homes Development of single family homes got enough open space within their pocket to support that subdivision's density. According to Elliott, none of the land that is in white on the map is open space for this development. He considers the remaining acreage to be just raw land that Jori LLC still owns. In Elliott's opinion, Jori can sell it off and do whatever Jori wants to do with it, with Planning Board approval. In Elliott's opinion, even if you take off the 20.72 acre lot, Jori still has more than sufficient acreage to support its overall full development plan. Jori plans to develop the next phase which will be Forest Garden Phase 2L (32 Units).

Bont and Burbank pointed out that the Development Agreement dated January 25, 1996, (Recorded in the Grafton County Registry of Deeds in Book 2252, Page 0785 on May 28, 1997), Paragraph 3 reads,

"Maximum Number of Units: Forest Ridge is approved for an overall density of Four Hundred Ninety-Eight (498) dwelling units provided each phase or subdivision obtains subdivision approval in accordance with the above Paragraph 1 ("Phased Development") of this Agreement. This is the maximum number of dwelling units which will be permitted on the entire 814 acre Forest Ridge Property.

[Note: According to the Master Plan Map, recorded in the Grafton Country Registry of Deeds as Plan #8941 on June 6, 1997, 814 acres would have included 78.3 acres of developed areas PLUS the 154 acre parcel (Map 115 Lot 017) PLUS the 530 acre parcel (Map 408, Lot 001) PLUS an additional 16.85 acres not accounted for on the Master Plan map. At the time the Development Agreement was signed in 1996, it appears that the minimum lot size in the General

Use Zone was 15,000 square feet. We could not find a copy of the 1996 Land Use Plan Ordinance. In 1998 the minimum lot size in the General Use Zone was 15,000 square feet.]

*The recorded Development Agreement also refers to a **Master Plan Report** attached as Appendix 1 and incorporated by reference into the agreement. The Master Plan Report has the text of the Master Plan that would explain what is now up in the air. The language in the deed clearly talks about certain areas being designated as “open space”. We have a copy of an earlier draft of the Master Plan Report dated October of 1995, however, because the Development Agreement refers to certain paragraphs (5a, 5b, 5c, 5d and 5e) that are not present in the October 1995 draft significant changes must have been made to the October 1995 draft. Because we do not have a copy of the Master Plan Report referred to in the deed, there is no way to properly address this issue. For this reason Bont and Burbank also recommend that the Town negotiate an updated Development Agreement with Jori that will be properly recorded, including a Master Plan Report.*

*Furthermore, the Development Agreement appears to support an updated Master Plan. Paragraph 8 of the Development Agreement says: “**Progress Review:** GS Phoenix shall provide the Planning Board with an updated Master Plan after each subdivision approval which results in the transfer of density between phases. GS Phoenix will report to the Planning Board annually each January on the status of the Master Plan.” There is no evidence to suggest that a new Master Plan Report was ever presented since the initial one was adopted in 1996. The 1996 Master Plan Report is currently missing.*

New Development Agreement to Be Negotiated:

Elliott indicated that he would be willing to renegotiate a Development Agreement.

Bont pointed out that the Master Plan in the original Development Agreement was not negotiated by Elliott. It was negotiated and signed by Robert A. Satter, as Sole Manager and President of GS Phoenix, LLC aka Granite State Phoenix Corporation – at least two or more owners prior to Jori Properties, LLC (i.e., John Houser & Richard Elliott). Houser and Elliott were not involved at all in those negotiations. In response to inquiry by the Planning Board, Elliott informed the Planning Board that he had every intention of developing the 530 acres listed on the tax map as Map 408, Lot 001, also owned by Jori Properties, LLC.

Hettinger suggested that the Planning Board approve the Subdivision/Lot Line Adjustment on condition that a new agreement is to be negotiated.

Burbank reminded the Planning Board that the Planning Board does not have the authority to negotiate an agreement with Elliott. That authority lies with the Board of Selectmen. The Board of Selectmen may negotiate a new Development Agreement between the Town and Elliott on behalf of Jori. Burbank and Bont recommended, in accordance with the Town Counsel’s legal opinion, that the Planning Board approve the subdivision/lot line adjustment on condition that Jori Properties LLC negotiate a new Development Agreement with the Board of Selectmen and record it. Part of the agreement should address the Town’s needs for water tanks and access for Jori.

Motion to open the public hearing.

Motion: Robinson.

Second: Spanos.

Motion carried (4-0).

No Comments from the audience.

Motion to Close the Public Hearing:

Moved: Robinson.

Second: Hettinger.

Motion carried (4-0).

Motion to approve the Lot Line Adjustment for Map 115, Lot 017 (Parcel 2, Forest Ridge) & Map 122, Lot 001 (LO Pollard Road), transferring 20.72 acres ("Parcel A") from Map 115, Lot 017 to Map 115, Lot 017. The sizes of the proposed subdivided lots will be as follows:

Map 122 Lot 001 will change from 6.35 Acres to 27.07 Acres.

Map 115, Lot 017 will change from 154.0 Acres to 133.28 Acres.

The approval is subject to the condition that the Town of Lincoln and the Jori Properties, LLC, reach a new Development Agreement to be recorded. The overall Development Agreement shall take into consideration transferring the land under the water tank to the Town and shall address Jori's access needs.

Moved: Robinson.

Second: Hettinger.

Motion carried (4-0).

IV. NEW BUSINESS

Norman Belanger returned to sit at the head table as an alternate member of the Planning Board.

A. 6:00 pm. Application for Site Plan Review – Change in Use from a Restaurant to a Bank

1. Application (SPR #2013-06)

2. Map 118, Lot 049

3. Address: 135 Main Street

4. Applicant: Union Bank (Vermont)

c/o Paul Grogan, Facilities Officer
20 Lower Main Street, PO Box 667
Morrisville, VT 05661-0667

5. Owner: Union Bank (Vermont)

c/o Paul Grogan, Facilities Officer

20 Lower Main Street, PO Box 667
Morrisville, VT 05661-0667

- 6. Proposal: Site Plan Review Approval for a Change of Use.** Union Bank, of 20 Lower Main Street, PO Box 667, Morrisville, VT 05661 purchased the property at 135 Main St (the old Mr. W's) (Map 118, Lot 49) from Longhorn Palace, Inc. Union bank requests the Planning Board grant approval for a change in use in the Village Center District at 135 Main Street (Tax Map 118, Lot 049) from a restaurant to a branch bank with a drive up window in accordance with Article V, Section A of the Lincoln Site Plan Review Regulations. Union Bank also intends to do some cosmetic renovations to the existing building. The building used to house a bank with a drive up window prior to being a restaurant.

Union Bank (Vermont) submitted an Application for Site Plan Review, a completed Site Plan Review Checklist with a request for a number of waivers. Last month Grogan appeared before the Planning Board for a conceptual. He has given the Planning Board the information addressing the issues the Planning Board was concerned about. The Site Plan Review Checklist Answers includes some diagrams and maps. The Board reviewed the tax map with some drawing on it. That is the document that you need to focus on.

Bont reviewed the application with Public Works Director Bill Willey prior to the meeting. Willey's concerns were as follows:

- 1. Where are the sidewalks in relation to the property lines? Is the sidewalk within your property boundary lines or outside of the property boundary lines? Willey wanted to make sure the sidewalks were not on Union Bank property.*
 - a. Grogan responded that the sidewalks are just outside the property boundary lines shown on the map. Willey wanted to make sure the sidewalk was outside the box on two sides – on and along School Street and Route 112 aka "Main Street". On Coolidge Street the parking lot is up against a concrete wall.*
- 2. Make sure the two water shut offs on the building stay accessible. One shut-off is located on the Main Street side of the building. The second one is on the Coolidge Street side of the building.*
- 3. Willey wanted Union Bank to know about the parking lot drain. There is a drain which is right behind where it says "new lawn" on the map. It is hooked up to the State catch basin on School Street.*
- 4. Willey wanted Union Bank to know where the town sewer drain is. The sewer drain is located in the lower left hand corner where it says "lawn" and "light poles". It looks like it is in the first parking space closest to School Street. There is a sewer line that goes diagonally across the parking lot under the parking lot from the sewer drain.*
- 5. Willey would like the town to get a sewer maintenance easement from the Union Bank so that the town can maintain the sewer line. Although the lack of a formal easement has not really been issue to date, the previous owner was reluctant to grant such a formal easement.*

- a. Burbank explained that Willey was talking about just a maintenance easement so if the town needs to dig up the sewer line for some reason the Town would have a right to be in there to do the work. Beaudin asked if the Town had the right to dig up the sewer line anyway even if the town did not have a formal easement. Burbank responded that it works better with a formal easement. The property owners can hold up the repairs while they argue about whether the Town has the right to be on their property. It is just cleaner if you have the easements in place.
6. Willey would like the Coolidge Street easement across Union Bank property to reflect the actual location of Coolidge Street. We don't know whether there is a recorded easement for the 1971 Town twenty foot (20') right of way easement shown on the plan, however, the present location of the easement as shown on the map should be moved over to the right where it is actually located. As it presently is shown, the easement for Coolidge Street goes right through the northeast side of the building and over the lawn. Willey thought that since the Union Bank is a new owner, the bank might be willing to provide an easement that reflects the proper location of the easement. The right of way is in the wrong spot. Coolidge Street is already there. Put the easement where the street is.
- a. Robinson asked if the easement is in writing, spelled out on a recorded site plan map or verbatim on a deed. Burbank, Bont and Grogan had not seen one. Spanos remembered that the prior owners had come in for a site plan review and they had a plan, but he did not remember the Coolidge Street easement being discussed at that time.

Grogan indicated that the Union Bank would have no problem cleaning those things up. The Bank would prefer to have the easement in the correct location.

Motion to grant the waivers requested.

Motion: Robinson.

Second: Hettinger.

Motion carried (4-0).

Motion to accept the application as complete.

Motion: Robinson.

Second: Hettinger.

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

Motion to open the public hearing.

Motion: Hettinger.

Second: Belanger.

Motion carried (4-0).

No comments from the public.

Motion to Close the Public Hearing:

Motion: Robinson.

Second: Hettinger.

Motion carried (4-0).

Motion to Approve the Application for Site Plan Review with Conditions:**Conditions:**

1. Grant the Town an appropriate Sewer Maintenance Easement
2. Keep the two (2) water shut offs on the building accessible for Public Works
3. Grant the Town an Easement for Coolidge Street, moving the 1971 Town Easement for Coolidge Street to where the parties agree it is actually located on the ground – where it should be.

Moved: Robinson.**Second: Hettinger.****Motion carried (4-0).**

B. Presentation of Final Copy of Updated Capital Improvement Plan (CIP) for 2014.

The Planning Board already held the public hearing and approved the CIP at a prior meeting. This is just a presentation of the final copy of the CIP to the Planning Board members.

V. OTHER BUSINESS

- A. **Request for a Waiver of Site Plan Review** by Joseph Chenard on behalf of AMBA Hotel, LLC d/b/a Comfort Inn at 21 Railroad Street, owned by AMBA Hotel, LLC, at 44 Bedford Street, Lexington, MA 02420, Map 112, Lot 017. AMBA Hotel wants to put up two lights near the entrance to the Comfort Inn. Part of Approved Site Plan approved with conditions on August 26, 1998, included the condition “Any proposed off-site lighting plan is to be submitted to the Planning Board for approval.” (Joe Chenard to bring in a diagram with the location of the proposed lights on a map.)

Bont reported that Chenard called shortly before the meeting. He will not be attending tonight's meeting. He has come up with a plan he thinks the Planning Board will like better. Chenard's boss, the Comfort Inn, wants to add two street lights at the entrance to the Comfort Inn. Originally, when Chenard came to the Town Offices to ask whether or not he needed Site Plan Review approval to just put in a couple of street lights to light the entrance to the Inn Bont and Burbank were not sure why he was asking permission to put up a street light on land owned by the Comfort Inn. They understood that Chenard was putting two street lights on the Comfort Inn's own property. However, after some digging they found that years ago there had been Site Plan Review to put in the Comfort Inn and part of the approved Site Plan involved on-premises lighting. Many on-premises street lights were approved. The property boundaries were clearly marked on the Site Plan Review map. Joe Chenard was the Chairman of the Planning Board when the approval was granted. The approval was conditional. One of the conditions was that if there was to be any future lighting offsite the Comfort Inn would have to come back for another site plan review.

On Sunday Burbank came up to Lincoln on Sunday to see where Chenard had marked the placement of the lights with orange spray paint and take photos. Burbank saw that Chenard had already started to put the lighting in. Burbank did not believe that the lights were being located on Comfort Inn property. Burbank thought it looked like the lights were being placed on property owned by the Hobo Railroad – within the right of way for the road – so Bont and Burbank told

Chenard that he had to come in to discuss whether the Planning Board would be willing to grant the Comfort Inn a waiver of Site Plan Review. He was going to come tonight to request a waiver, but now he is going to come later with a new plan.

III. ADJOURNMENT:

Motion to Adjourn.

Motion: Hettinger.

Second: Robinson.


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

The meeting was adjourned by at 6:38 pm.

Respectfully submitted,

Carole Bont, Planning & Zoning Administrator

Dated: January 8, 2014


R. Patrick Romprey, Chairman