

LINCOLN PLANNING BOARD
REGULAR MEETING MINUTES
TUESDAY, DECEMBER 22, 2015 – 6:00PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH

APPROVED

Present: Chairman Jim Spanos, Vice-Chairman R. Patrick Romprey, OJ Robinson - Selectmen's Representative, John Hettinger, Paula Strickon, Callum Grant (alternate)

Members Excused: Ron Beard (alternate & Fire Chief), Taylor Beaudin (alternate), Norman Belanger (alternate)

Members Absent: None

Staff Present: Town Manager and Town Planner Alfred "Butch" Burbank, and Wendy Tanner (recorder), Fire Chief Ron Beard acting as Fire Chief

Staff Excused: Planning and Zoning Administrator Carole Bont

Town Attorney Present: Peter Malia, Esq., of Hastings Malia Law Office, P.A., 376 Main Street, PO Box 290, Fryeburg, ME 04037-0290

Guests:

Developer's Representatives:

- **Schorr Berman** – Managing Partner and Principal of Saber Mountain Partners, LLC, that is the developer of "The Landing At Loon Mountain" ("The Landing") and owner of all of the unsold lots and common areas including all of the roads and the river frontage on East Branch of Pemigewasset River.
- **Michael (Mike) Duffy P.E.** – Vice President of Horizons Engineering, 34 School Street, Littleton, NH 03561, engineering firm representing Schorr Berman, Managing Partner and Principal of Saber Mountain Partners, LLC
- **Stephen (Steve) M. LaFrance, P.E.** – Principal Engineer of Horizons Engineering, 34 School Street, Littleton, NH 03561, engineering firm representing Schorr Berman, Managing Partner and Principal of Saber Mountain Partners, LLC
- **Frank Spinella, Esq.** – Attorney from Hall, Morse, Anderson & Spinella, PC, 14 Centre Street, Concord, NH 03301 representing Schorr Berman, Managing Partner and Principal of Saber Mountain Partners, LLC

Abutters and Their Representatives:

- **Bradford (Brad) Dalbeck** – abutter and a principal trustee for 2 Buck Road (Tax Map 130, Lot 099) in "The Landing" owned by Bradford & Sandra J. Dalbeck. Trustees of Dalbeck Family Realty Trust, 5 High Rock Road, Stoneham, MA 02180
- **John R. (Jack) Daly** – abutter, resident and a principal owner of 186 Black Mountain (Tax Map 130, Lot 097) in "The Landing" owned by John R. & Donna M. Daly, 186 Black Mountain Road, PO Box 450, Lincoln, NH 03251-0450
- **Gina G. Donovan** – a principal owner of 132A Woodland Loop (Tax Map 114, Lot 046000-02-00017) and 23 Back Forty Road (Tax Map 132, Lot 039) both owned by Michael G. & Gina A. Donovan, 25 Hardwick Road, Ashland, MA 01721

- **Michael G. Donovan** – a principal owner of 132A Woodland Loop (Tax Map 114, Lot 046000-02-00017) and 23 Back Forty Road (Tax Map 132, Lot 039) both owned by Michael G. & Gina A. Donovan, 25 Hardwick Road, Ashland, MA 01721
- **Scott Douglas Burke, Esq.** – Attorney representing Michael and Gina Donovan from Morrison Mahoney, LLP, 250 Summer Street, Boston, MA 02210
- **Brenton (Brent) W. Drouin** – abutter and resident of 2 Hay Hill (Tax Map 132, Lot 058) in “The Landing” owned by Brenton W. Drouin, PO Box 788, Lincoln, NH 03251-0788 and Owner of Century 21 Mountainside Realty, 49 Main Street, Lincoln, NH 03251
- **Janet Furey** – abutter and a principal trustee for 156 Black Mountain Road (Tax Map 130, Lot 100) in “The Landing” owned by Robert Furey Jr. & Janet Furey, Trustees of Robert Andreas Furey Jr. Revocable Trust, 161 Nashoba Road, Concord, MA 01742-2200
- **Robert (Bob) Furey, Jr.** – abutter and a principal trustee of 156 Black Mountain Road (Tax Map 130, Lot 100) in “The Landing” owned by Robert Furey Jr. & Janet Furey, Trustees of Robert Andreas Furey Jr. Revocable Trust, 161 Nashoba Road, Concord, MA 01742-2200
- **Robert E. Leggat** – abutter and a principal owner of 5 Buck Road (Tax Map 132, Lot 017) in “The Landing” owned by Sara M. D’Eathe & Robert E. Leggat, 21 Deep Run, Cohasset, MA 02025
- **Alvin (Al) H. MacQuarrie** – an abutter, resident and principal trustee of 32 Loonwood Road Unit #2 (Tax Map 130, Lot 060-05-00009) located in Beechwood II, owned by Alvin H. MacQuarrie & Joan M. MacQuarrie Trustees of Alvin H. MacQuarrie Revocable Trust, PO Box 1343, Lincoln, NH 03251-1343 and Treasurer of the Beechwood II Homeowners Association
- **Liana Meyers** – a principal owner of 1 Buck Road at “The Landing” (Tax Map 132, Lot 015) owned by Ethan & Liana Meyers, 164 North Main Street, Cohasset, MA 02025
- **Philip (Phil) C. Rackley** – an abutter, resident and owner of 170 Black Mountain Road (Tax Map 130, Lot 099) located in Beechwood II, PO Box 23, Lincoln, NH 03251-0023 and President of the Beechwood II Homeowners Association
- **Debby Saitow** – abutter and a resident of 3 Buck Road (Tax Map 132, Lot 016) in “The Landing” owned by Ivan Saitow Trustee, 3 Buck Road Realty Trust, PO Box 1149, Lincoln, NH 03249-1149
- **Ivan Saitow** – abutter and a resident and principal trustee for 3 Buck Road (Tax Map 132, Lot 016) in “The Landing” owned by Ivan Saitow Trustee, Three Buck Road Realty Trust, PO Box 1149, Lincoln, NH 03249-1149
- **Lonnie Sawyer** – Owner/operator of Leisure, Travel & Tourism in Lincoln, NH and representative of Riverglade Condominium Association. Riverglade Condominium Association is an abutter.
- **Thomas Tremblay** –President of Coldwell Banker Linwood Real Estate, 189 Main Street, Lincoln, NH 03251
- **Clark Wrye** – an abutter and resident of 73 Beechnut Drive (Tax Map 126, Lot 010) owned by Marise K. Wrye, Trustee of Marise K. Wrye Revocable Trust, PO Box 1180, Lincoln, NH 03251-1180

following roads: Back Forty Road, Black Mountain Road, Buck Road, Hay Hill Road, Landing Road and Wanigan Road.

- Lots located in the Rural Residential (RR) District: Tax Map 130, Lots 062-067; Tax Map 131, Lots 002- 032, 034-052; Tax Map 133, Lots 041-044. Tax Map 133, Lot 44 includes the following roads in the Rural Residential (RR) District: Back Forty Road (a portion), Black Mountain Road (a portion), Buck Road, Hay Hill Road (a portion), Landing Road (a portion) & Wanigan Road.
- Lots located in the Mountain Residential (MR) District: Tax Map 130, Lots 068-085, Tax Map 131, Lots 033, 053-055; Tax Map 133, Lot 44 includes the following roads in the Mountain Residential (MR) District: Back Forty Road (a portion), Black Mountain Road (a portion), Hay Hill Road (a portion), and Landing Road (a portion).
 - Eleven (11) lots have been sold and have houses built on the lot:
Map 130, Lot 063, 075, 085
Map 132, Lot 013, 015, 016, 017, 031, 032, 056, 058
 - Nine (9) lots have been sold, but no houses have been built on the lots yet.
Map 130, Lot 068, 074, 076
Map 132, Lot 008, 011, 012, 014, 018, 039

Background: The development known as “The Landing at Loon Mountain” was developed and originally owned in its entirety by Saber Mountain Partners, LLC, PO Box 820, Lincoln, NH 03251-0820. (Principal: Schorr Berman). The original PB approval was granted at the PB meeting on April 27, 2005, with a Notice of Decision of the Conditional Approval dated May 26, 2005. The Subdivision/Site Plan Review approval was modified on April 10, 2013, to accommodate hammerhead turnarounds instead of cul-de-sacs at the end of two roads. The revised approval expired on April 10, 2015. The Letter of Credit for Black Mountain Road, reduced from \$250,000 to \$100,000, expired on January 12, 2015.

For the Compliance Hearing, the PB will review whether the developer met the conditions imposed in its Conditional Approval. Interested parties are invited to attend to show why this project should, or should not, be considered to be found in compliance of the conditional approval. Should a decision not be reached at the public hearing, this application will stay on the PB agenda until such time as it is either approved or disapproved without further published notice.

Background Presentation by Town Attorney Peter Malia:

Attorney Peter Malia gave a brief overview of the issues.

Attorney Peter Malia said:

In 2005 the Planning Board originally approved Subdivision and Site Plan Review for “The Landing at Loon Mountain” (aka “The Landing”). (See Exhibit A attached – Notice of Decision

with attached tax maps for 2004-2006 & 2014 for illustrative purposes.) That approval was evident by two (2) plans that were recorded in the Grafton County Registry of Deeds, the first in 2005 as Plan #11951 and the second in 2006 as Plan #12248. The developer came back to the Planning Board in October of 2012 and asked to modify those approved plans. The primary reason for the modification was to change the cul-de-sacs at the end of Buck Road and Back Forty Road to hammerhead turnarounds. That request was approved by the Planning Board and a new plan was recorded in the Registry of Deeds in April of 2013 as Plan #14433. Attorney Malia suggested that if a plan was used tonight to talk about the subdivision that Plan #14433 should be used because it is the most recent on record in the Registry of Deeds. All that change did in 2012 was change the cul-de-sacs at the ends of both Buck Road and Back Forty Road to hammerhead turnarounds and as a result tweaked some of the boundary lines associated with some of the lots in those areas. (See Exhibit B attached of three recorded plans.)

Most recently, this year in July 2015, Fire Chief Ron Beard wrote a memo to Town Manager Burbank summarizing a meeting he recently had with Schorr Berman. (See Exhibit C attached July 27, 2015 Memo from Fire Chief Ron Beard.) In that memo Fire Chief Beard explained some of his concerns regarding fire protection.

Town Manager Burbank then had a discussion with Attorney Malia regarding Fire Chief Beard's concerns regarding fire protection and Burbank's concerns as Town Planner until Ron Beard's fire suppression issues could be satisfied. Burbank is the Town Planner in addition to Town Manager in regards to continuing to issue Land Use Permits. Attorney Malia conducted research and determined that it was within Burbank's authority as Town Planner as the issuer of Land Use Permits within the Town of Lincoln to decline to issue those permits until such time as the Fire Chief's issues with fire suppression and fire protection were satisfied.

On August 6, 2015, Town Manager/Planner Burbank notified Schorr Berman that he would not be issuing any more Land Use Permits for "The Landing" Subdivision until Fire Chief Beard's fire suppression and fire protection issues were taken care of. (See Exhibit D attached August 6, 2015 E-mail from Town Manager/Planner Burbank.)

Attorney Malia stated that there was a meeting on September 1, 2015 at the Town Hall with:

- Town Manager/Planner Burbank
- Attorney Peter Malia
- Town Engineer David Edson
- Fire Chief Ron Beard
- Public Works Director Bill Willey

They met with:

- Schorr Berman for Saber Mountain Partners, LLC
- Attorney Frank Spinella for Saber Mountain Partners, LLC
- Engineer Stephen LaFrance of Horizons Engineering representing Schorr Berman

They discussed Fire Chief Beard's issues and concerns regarding fire suppression primarily. They discussed applicable fire codes and talked about possible solutions. No solutions were

arrived at that day but left with the understanding that the meeting would reconvene at a later date.

Fire Chief Beard then invited the State Fire Marshal's office to take a look at "The Landing". Consequently, Section Chief Ron Anstey from the State Fire Marshal's Office came to Lincoln, on or around October 5, 2015. On October 5, 2015, Section Chief Anstey wrote an e-mail to Fire Chief Beard summarizing his sight visit at "The Landing". (See Exhibit E attached e-mail from Chief Anstey dated October 5, 2015.) (That letter is a matter of public record.) Anstey's email confirmed Fire Chief Beard's concerns regarding fire suppression issues. Anstey's email also proposed a couple of possible solutions.

The letter from Section Chief Anstey led to a certified letter dated October 30, 2015, from Fire Chief Beard to Mr. Berman, the owner/developer of "The Landing", outlining possible options to resolve the problem. (See Exhibit F attached letter from Section Chief Ron Anstey.) The letter from Fire Chief Beard, in turn, led to a meeting on November 4, 2015 with the same people that were in the September 1, 2015 meeting with the addition of:

- Mr. Ron Anstey, Section Chief of the State Fire Marshal's Office
- Anstey's boss, the State of New Hampshire Fire Marshal William (Bill) Degnan
- Planning and Zoning Administrator Carole Bont

There was a lengthy discussion about fire codes and fire suppression as they apply to the situation at "The Landing". They kicked around a number of different options to try and satisfy the Fire Chief's concerns. In that meeting they arrived at a framework of the solution to that situation that had a couple of conditions that needed to be met and required more work but was the framework of a solution that everyone was somewhat satisfied with. The solution was reduced to writing in about five (5) paragraphs. (See Exhibit G. attached tentative agreement.)

That tentative framework agreement, which was a proposed solution that is subject to the Planning Board's approval.

1. **Two (2) 10,000 gallon cisterns to be built in a new location.**

Essentially it calls for two (2) cisterns to be built in new locations. Back in 2005 when the Planning Board approved the development, it was approved with the understanding that four (4) cisterns would be built. Each of the cisterns would be ten thousand (10,000) gallons. To date, two (2) of them have been built and two (2) have not been built.

At the meeting on November 4, 2015 the various participants at the meeting arrived at new proposed locations for the two (2) cisterns that had not been built. The proposed locations for the two (2) cisterns are different from what the Planning Board had agreed to back in 2005. However, the cisterns would be placed in better positions for fire suppression purposes as far as the Fire Chief is concerned.

2. Two (2) Temporary Turnarounds to Be Built.

In addition to the two (2) new cisterns to be built, the proposed solution also called for temporary turnarounds being built at or near the end of Buck Road and Back Forty Road that would be sufficient to allow fire apparatus to turn around and get in and out of a fire without having to back all the way out. Buck Road and Back Forty Road have not been built across the stream to the hammerhead turnaround shown on the plan from 2012/2013. The temporary turnarounds are to be built until those roads are completed and permanent hammerheads are built.

3. Residential Sprinkler Systems Required.

This agreement or tentative solution called for the sale of future lots at “The Landing” would be subject to the Town of Lincoln Planning Board requirement of residential sprinkler systems for any new construction.

Lots sold as of this date would be grandfathered from the residential sprinkler requirement. At this point there are a total of eighty four (84) lots in “The Landing”.

- Eleven (11) houses have been built.
- Nine (9) lots have been sold with no houses built yet.
- Sixty four (64) lots have not been sold yet. These sixty four (64) lots would be subject to residential sprinkler requirement.

4. File a Request for an Extension of Planning Board Approval.

Saber Mountain Partners, LLC, would file an Application for Extension of its Planning Board Site Plan Review/Subdivision Approval, which has expired.

Attorney Malia explained that was what they came up with on November 4, 2015 as a possible resolution to these issues. Mr. Berman has filed the Request for Extension of his Planning Board Approval which has expired. The Planning Board has made the decision to schedule this for a compliance hearing to assess the development’s compliance with the original conditions in the 2005 decision and any subsequent requirements that were imposed in 2012.

Presentation by Attorney for Schorr Berman of Saber Mountain Partners, LLC

Attorney Frank Spinella, representing Schorr Berman, started by saying that in 2005 when the original approval was made, the Fire Chief then was not the same person who is the Fire Chief now. Attorney Spinella said that the fact that every Fire Chief may have a different view than his predecessor was not surprising. Attorney Spinella said that when this project started in 2005 they received an approval that the Town’s Fire Chief at the time could live with and proceeded.

Attorney Spinella said that markets do change and that the bottom dropped out of the market on this developer; his client had a “slower road” than his client had hoped. Now his client is trying

to get this development back on track and get it completed in a way that makes sense, is safe, and in a way that makes everybody as happy as he can. Attorney Spinella said that not everybody is going to be happy, “that’s impossible”. He and his client want to try and find a way of going forward that is both safe and economically viable for his client – the developer.

Attorney Spinella said that he believes they came fairly close to this during the November 4, 2015, meeting with Section Chief Ron Anstey and State Fire Marshall Bill Degnan from the State Fire Marshal’s Office. Attorney Spinella said that they came up with the framework that he thought all the members of the meeting, including the Town representatives, would make this project safe from a fire protection standpoint.

The settlement agreement that was reached on November 4, 2015, required Horizons Engineering Engineer LaFrance to do more work to price out the turnarounds at the ends of Buck Road and Back Forty Road. They did not know how much it would cost to build temporary turnarounds because it is such a steep site and is not easy to work. Attorney Spinella said that Engineer LaFrance needed to do some homework so that his client could obtain a price for the turnaround project. With that caveat, Attorney Malia and Attorney Spinella drafted a settlement agreement on November 4, 2015, that was signed by Schorr Berman and Town Manager/Planner Burbank. Attorney Spinella passed out copies of that drafted settlement agreement. (See Exhibit G.)

Attorney Spinella explained that after the initial agreement was signed, Schorr Berman initialed a change “to handle mentioning that engineering needed to be done before the cost of the temporary turnarounds could be ascertained”. The engineering is now done and they have perceived the cost and found that it is not financially prohibitive to put the temporary turnarounds in. Attorney Spinella said that the hand written part of the document was now “moot” but that the other five (5) items are what was agreed to and what were signed off on by both sides. At that time on November 4, 2015, Attorney Spinella thought they had a framework that was going to govern the project.

Chair Spanos asked if the handwritten change was penciled in after it was signed by both parties. Attorney Spinella said, “Yes”, but that the handwritten change was only initialed by one party. Attorney Spinella said the Town Manager/Planner Burbank was not comfortable initialing the change but that the change is now moot.

Schorr Berman said, “It wasn’t initialed or changed after both parties had signed. It was changed after Butch had signed; before I had signed it in order to clarify what I felt was the understanding of the meeting”.

Attorney Spinella said, “It was signed by Schorr below and then initialed that is what I meant, seconds apart.” Attorney Spinella said this set of five (5) requirements includes all of the things his client was prepared to go forward with, but his client had some concerns. Attorney Spinella wanted to address those concerns in the context of the compliance hearing.

Attorney Spinella said that there has been some history for “The Landing” and some concerns that his client has had as a result of that history whereby approvals that were given and

requirements that were in place later started to change. Attorney Spinella said that part of that change has been precipitated by the new Fire Chief who has his own ideas. Attorney Spinella said it took them some time and discussion to get to this point. Attorney Spinella said it took some intervention by the State Fire Marshal's Office before they could come to terms that were satisfactory to both sides.

Attorney Spinella said that the change in fire protection requirements is not the only thing that has happened. Over time Schorr Berman representing Saber Mountain Partners has felt that the Town's requirements for "The Landing" have started to change, not just in the area of fire protection but in other areas as well.

Attorney Spinella said that he was sure that the Planning Board could understand that from a developer's perspective it is very important to have a fixed target, a fixed set of requirements. Financially, it tells the developer what he needs to do. If those requirements start expanding, now suddenly the economic viability of the project can come into question. That is not something that is good for development and it is not something that his client wants to hear.

Attorney Spinella continued that he and his client "have tried to work in good faith to keep everybody on the same sheet" and not have what he calls "requirement creep". Attorney Spinella said his client has seen some requirement creep. His client is not prepared to handle that kind of creep. Attorney Spinella and his client can live with the terms in the November 4, 2015, agreement, but they need some kind of assurance that requirement creep is going to stop. Assuming the Planning Board sees fit to extend the approval, his client needs some kind of assurances going forward that the requirements that they have agreed to now are not going to increase tomorrow. If the requirements increase tomorrow, other financial considerations come into play.

Attorney Spinella said that his client was being asked to invest a lot more money into this project than his client thought he would have to invest. His client is being asked, and rightly so, to renew his road bond and to satisfy requirements already in place. However, at this time his client is being asked to do more, and his client is prepared to do some more as set forth here in this agreement.

Attorney Spinella said there have been a couple of things that have given his client "some pause". Some misinformation has been passed around Town about his client's development. Attorney Spinella said that although he is not a resident of Lincoln and he only hears about it second hand, "...there have been, I won't say, slanders against the development, I will just say that people have made comments and innuendos and accusations and allegations that aren't quite true."

Attorney Spinella gave as an example, the allegation that there is inadequate water pressure at "The Landing". The adequacy of water pressure for the houses has been questioned. Attorney Spinella's understanding is that there is no water pressure problem at "The Landing", but he would not know that if he listens to people who speak around town. Attorney Spinella said that is the type of allegation that can sink a development. That is the type of allegation that from a marketing prospective is exactly the opposite of what a developer would want.

Attorney Spinella said that he and his client do not want “The Landing” project to get “snake bit” because innuendos start floating around. His client cannot have that. Attorney Spinella is hopeful that everybody inside and outside of the meeting room will realize and recognize the importance of accuracy. No one should rely on rumors. Everyone should be aware of “the importance of sticking to the facts”. Those are things that any developer would need to know.

Attorney Spinella said that he mentioned earlier that he and his client want a set of requirements that “won’t creep”. One of the things that he and his client heard earlier this year concerns the stone walls at “The Landing”. Attorney Spinella said that he just wanted to mention that because it is important to his client that he and his client have some assurances from the Planning Board before his client sinks more money into this project. “The stone walls that were built originally were built to standards at the time. Subsequent standards are a bit stricter.”

Chair Spanos asked Attorney Spinella if he had a Code reference of the standards that the stone walls were built to. Attorney Spinella said, “I don’t have a code reference. I can get that to the Board and [Attorney] Peter [Malia] may actually have it. I don’t know, but I would get it to you, Peter, and you can transmit it.”

Attorney Spinella said “My client was told at one point that if there are repairs needed to the originally built stone walls, for example, a boulder falls off, then the entire wall, the entire length of the wall, which is hundreds of feet long in many cases, would have to be rebuilt to the new standards. It is my view that what is built back when the old standards were in vogue are grandfathered and there is no need to have them rebuilt and the fact that a repair needs to be done is not license to require them to be rebuilt. That’s a million dollar hit if the grandfathering is lost just because a wall loses a boulder. Those repairs should be made back to the original standards in vogue when they were constructed. That is the type of thing that my client needs some assurances on before investing the additional money that his is otherwise prepared to invest.”

Attorney Spinella said there is a way to have this project go forward to the satisfaction of all concerned. Attorney Spinella said this agreement provides the framework for what would satisfy the Fire Chief. As far as Attorney Spinella knows, there has been no change to these terms as far as what the Town is looking for from a fire protection standpoint:

- The precise locations of the turnarounds.
- The precise location of the two remaining cisterns.

Attorney Spinella said he understood that his client’s engineer, Stephen LaFrance of Horizons Engineering, has been in contact with Fire Chief Beard about cisterns and turnarounds. As far as Attorney Spinella is aware, there is general agreement about the locations of the temporary turnarounds and the cisterns. Although those locations may need to be tweaked some more that is “not a big deal”. Attorney Spinella and his client are willing to be educated otherwise. Attorney Spinella said that the big deal for his client is that no new requirements come in. If the Town has no new requirements, and if everyone can live with the deal struck on November 4, 2015, then his client can satisfy everything that the Town wants:

- Re-up the road bonds
- Go forward with the project as originally approved and as amended in 2012 with all of the amendments that Town Attorney Peter Malia discussed earlier and with the framework as set forth in the agreement going forward.

Attorney Spinella and his client would like to see the Planning Board ratify the earlier November 4, 2015, agreement. Attorney Spinella and his client went into talks with the Town on November 4, 2015, thinking that the terms of this agreement were going to happen, but now the Planning Board needs to weigh in. Attorney Spinella said the reason he handed out copies of the agreement was so that members of the Planning Board could see specifically what the requirements were.

- Get this done;
- Keep the goal post from moving again;
- Resolve that stone wall issue; and
- Keep the rumor level at a minimum.

Attorney Spinella said, then this project can and will succeed. Attorney Spinella said that he and his client are asking the Town to live with the approvals that his client has in place as amended to date and as discussed in the settlement agreement of November 4, 2015.

Strickon asked Attorney Spinella, apart from the stone wall issue, what other “requirement creeps” have they seen. She asked Attorney Spinella to give the Planning Board examples of “requirement creep”. Attorney Spinella said that the requirements for fire protection are the major ones.

Attorney Spinella said that initially he and his client heard that four (4) ten thousand (10,000) gallon cisterns were not sufficient for fire protection; each individual cistern needed to be much larger. There was a point in time when fire hydrants were designed. There was a point in time when road widening was designed. The 2005 plan had widths of roads:

- twenty two feet (22’);
- twenty feet (20’); and
- in one case eighteen feet (18’).

Those widths were approved by the Town back in 2005. Then the State Fire Marshal said he wanted wider roads, larger cisterns, and a water tank that would make fire protection somewhat easier.

Attorney Spinella said that after that November 4, 2015, meeting and with the assistance of Section Chief Ron Anstey and the State of New Hampshire Fire Marshal William (Bill) Degan, Lincoln Fire Chief Beard came to the conclusion (as evidenced by the signature of Town Manager/Planner Burbank on this document) that those things were no longer needed. Those are the types of “requirement creeps” that Attorney Spinella and his client were concerned about.

Strickon said that she got the impression when Attorney Spinella was talking that every two (2) or three (3) months something changed. Attorney Spinella said, “I did not say that.” Strickon said that was the impression that Attorney Spinella gave. Attorney Spinella apologized.

Hettinger said that he had not heard about the stone walls and water pressure concerns as a requirement. Attorney Spinella said that he would not call the water pressure concerns a requirement, but rather a rumor that is hurting his client’s project.

Retaining Walls:

Vice Chair Romprey said that regarding the stone retaining walls, he did not think that the building specifications for stone walls had changed in the last ten (10) years that he was aware of. Fire Chief Beard said minimum standards for retaining walls have been in the International Building Code (IBC) book since 2000. Vice Chair Romprey said that was what he thought; he did not understand where Attorney Spinella was getting “that detail”.

Attorney Spinella said that he would get that information to the Planning Board, when he gets back to his office; he will get them the State Building Code minimum standards for retaining walls that was “in vogue” back in 2005 and what the standards are today. Vice Chair Romprey asked Attorney Spinella, “In vogue by who[m]?” Attorney Spinella said that he understood the minimum standards for retaining walls were a State Building Code requirement. Vice Chair Romprey agreed, saying the minimum standards for retaining walls has been in the State Building Code since 2000. Attorney Spinella said that was not his understanding. “Fair enough, if it is, so be it.”

Schorr Berman identified himself as the current owner of “The Landing”. He addressed Vice Chair Romprey (former Chair):

“Pat, when you and I went through this dance in 2005 I wasn’t really involved, Michael Sabourin was. *[Michael Sabourin was Schorr Berman’s former partner in Saber Mountain Partners, LLC.]* In 2012, I was involved. And there are actually two (2) meetings in 2012. The first meeting was to get permission to do the Back Forty Road development. The second one later in 2012 was to get the turn-a-rounds converted to hammerheads.

“As you know there are miles and miles and miles of boulder walls built in Town. When the Saber Mountain Partners’ permission was granted by the Planning Board in 2005 and again in 2012 we hired contractors to build those walls. And so the State had one standard which wasn’t enforced in this area and so those boulder walls were built as they had been for decades.

“In late 2014 the town decided to adhere to the State [Building Code] standards. And so going forward all walls that are more than four feet (4’) high counting to the bottom of the first tiered boulder even if it’s in the ground, would have to conform to those State [Building Code] standards. And we are on board with that now and new homeowners

would have to build to those standards. Our concern is existing walls, as what would happen if a boulder falls off a wall.”

Vice Chair Romprey asked who told Berman that the retaining walls would have to be torn down and rebuilt as he has not heard that.

Schorr Berman said, “I heard it directly from a town employee. So from our perspective given that meeting, there was first the comment that there can’t be any maintenance. There has got to be maintenance. Then there was a discussion, what if a boulder falls off a wall, what would the impact be? And we just need to get some certainty of our risk profile across those boulder walls. That is what this conversation that [Attorney] Frank [Spinella] is having is addressing.”

Robinson questioned Attorney Spinella’s statement that back in 2005 when the stone walls were built, Attorney Spinella implied that the retaining walls were built to State [Building Code] standards. But, what Robinson heard from Attorney Spinella now is that the retaining walls were built to common local Lincoln standards. Robinson asked Attorney Spinella what entity had jurisdiction over the construction of stone walls if the Town was negligent in enforcing State Building Code regulations back in 2005. Was the developer supposed to abide by the State Building Code that was the law in effect at the time his client was building retaining walls?

Attorney Spinella said that it was his understanding that there have been changes to the State Building Code and that the IBC 2000 [International Building Code 2000] should not apply to his client. If the State Building Code (IBC 2000) standard was “in vogue” governing in 2005, but the Town did not require that walls be built to that standard, and then the Town changed its mind years later, so that the higher standard is now required, the point that Attorney Spinella is making is that his client’s stone retaining walls are grandfathered once he got the approval for the building.

Note: The New Hampshire or State Building Code in effect in 2005 was International Building Code (IBC) 2000. The State Building Code currently in effect is International Building Code (IBC) 2009.

(Per Section Chief Ron Anstey, NH State Fire Marshal’s Office)

The "New Hampshire building code" or "state building code", effective September 14, 2002, revised effective April 1, 2010 means the International Building Code 2009, the International Plumbing Code 2009, the International Mechanical Code 2009, the International Energy Conservation Code 2009, the International Residential Code 2009, and the International Existing Building Code 2009 as published by the International Code Council, and the National Electrical Code 2014 as published by the National Fire Protection Association.

<https://www.nh.gov/safety/boardsandcommissions/bldgcode/>

Attorney Spinella said the same grandfathering principle applies for the Fire Chief’s fire protection concerns. For example, the Planning Board approved as part of the development,

roads that were twenty two feet (22') wide, twenty feet (20') wide and eighteen feet (18') wide. Suppose that a new Fire Chief comes in 2018 and says, "I would like the roads wider." Attorney Spinella said that, "Fortunately we solved this problem of the road widths by the agreement dated November 4, 2015, if the Planning Board allows this development to go forward."

Attorney Spinella said the same grandfathering principle applies to all aspects of the development; if there are standards for a particular width of a road or a particular way of constructing a wall, (and those standards while they may be enforceable if the town had chosen to enforce them, but the town does not choose to enforce them), these roads and walls still should be grandfathered. Attorney Spinella thinks is unfair to his client, the developer, for the Town to say now, "Well, we made a mistake, we want to go back and have you rebuild the roads and the walls to a stricter standard because that standard should have been enforced back then."

Robinson asked if the Town can choose whether or not to enforce the State Building Codes, addressing his question to the Section Chief Ron Anstey from the State Fire Marshal's Office.

Ron Anstey introduced himself as Section Chief of Engineering and Plans Review of the Fire Marshal's Office. Section Chief Anstey said the State Building Code went into effect in the year 2000. The State Building Code is enforceable throughout the State of New Hampshire. What the State Statute says is that if there is no enforcement authority in a municipality [*because the municipality did not vote to adopt NH RSA 155-A*] then the contractor is responsible to ensure that the structure (or whatever falls under the jurisdiction of the State Building Code) meets the requirements of the State Building Code. If the Town has no enforcement authority, then the contractor statutorily holds that responsibility to ensure that it is constructed correctly. A Town does not have to adopt it [*NH RSA 155-A*] to have the State Building Code enforceable. So if there has not been a change in what the requirements are for walls from 2000, the State Building Code has been in force state-wide; the State Building Code is enforceable state-wide. Section Chief Anstey did not recall a change in the standards for retaining walls between the 2000 IBC and the 2009 IBC he had with him, but the State Building Code requirements are easy to look up and find out.

Attorney Spinella said that he would get to the Planning Board the 2000 version and the current version.

Robinson asked Section Chief Anstey if that was the same rules would apply to the width of roads. If the Planning Board approved an eighteen (18) foot wide road, would that meet state requirements?

Section Chief Anstey said that the road width issue is addressed in a fire standard called NFPA 1141 that has to do with urban wildland interface.

NFPA 1141: STANDARD FOR FIRE PROTECTION – INFRASTRUCTURE FOR LAND DEVELOPMENT IN WILDLAND, RURAL, AND SUBURBAN AREAS -

This standard provides requirements for the development of fire protection and emergency services infrastructure to make sure that wildland, rural, and suburban areas undergoing land use changes or land development have the resources and strategies in place to protect people and property from fire dangers, and allow fire fighters to do their jobs safely and effectively.

www.nfpa.org

The NFPA 1141 standard calls for roads to be twenty four feet (24') wide. Ideally, the Fire Marshal's Office can go back and say this is what is supposed to happen and it did not happen. However, he thinks that everybody involved, including the State Fire Marshal, Bill Degan, thinks that would be fairly ridiculous at this juncture for this project to remake the roads into twenty-four feet (24') wide roads, so the agreement that we came up with is, from the Fire Marshal's perspective, a reasonable one.

Section Chief Anstey said that with regard to constructing a retaining wall, ideally if something was not built correctly when it was built originally it is deemed **not** to be compliant. They can rate it. If something was built **and it was in compliance at the time it was built**, but then the code changed, it would be deemed to be compliant. For example, fire lanes used to have to be eighteen feet (18') wide, however, under the code today they have to be twenty feet (20') wide. If you have a facility that was built with eighteen foot (18') fire lanes when that standard was applicable, even though the code changed, the width requirement is not retroactive to that eighteen foot (18') fire lane. So anything that was built in compliance when it was built is deemed to be compliant unless the code specifically calls for a retroactive application.

Chair Spanos asked if the contractor goes out of business does the responsibility fall upon the owner to correct it. Section Chief Anstey said that would be a question for an attorney.

Robinson said that he wanted to go back to address the applicant's fear of continued "creep" of retaining wall regulations. If there was an incident up at "The Landing" today that involved deterioration of a stone retaining wall, does the town have any leeway on what they can or should or want to enforce? Can the Town come back and totally restrict this? Or does the Town need to come back to State Building Code?

Section Chief Anstey said that the State Building Code is making the assumption that the retaining walls were built to the standards required under the State Building Code in force at the time they were built. The State Building Code will allow for maintenance. The State Building Code will allow for you to maintain your retaining wall like any other structure. If all of a sudden you have to change the siding on your home, you do not have to go in and now bring that entire home up to the 2009 State Building Code standards. The State Building Code will allow for maintenance; it will allow for repair. As a rule, if you were going to be allowed to repair or renovate something up to fifty percent (50%), at which point you have to bring up the structure to meet the requirements of the newer State Building Code. But if you are just doing repairs or minor renovations that is not a catalyst to jump you up to a newer version of the State Building Code.

Vice Chair Romprey asked if that same principle applied to an existing compliant wall. Section Chief Anstey said, “Yes.”

Vice Chair Romprey asked, “What about a non-compliant wall?” Section Chief Anstey said that Vice Chair Romprey was getting into the attorney area again.

Section Chief Anstey said there are occasions when the State Fire Marshal’s Office will review a structure to evaluate whether it is in compliance with the State Building Code. The State Fire Marshal’s Office might evaluate the structure and say, “Okay, this is an existing condition, it may be non-compliant, but it is an existing condition. If it’s agreed that it is an existing condition and it was approved, for something like that we will ask for an engineering opinion with an engineering stamp saying that although this structure does not meet the letter of the State Building Code, it is ‘structurally sound’ and we may allow it as an accepted ‘existing condition’. Then you can do the repair without having to jump in and do a total renovation of the wall.”

Robinson asked if the applicant [and his attorney] would agree that following the requirements of the State Building Code for maintenance or repair as Section Chief Anstey just described is not “conditions creep” or overreaching by the Planning Board or the Town.

Attorney Spinella said that if the fifty percent (50%) rule were to be enforced, if half or more of the wall needed repairs then the entire wall would have to be brought up to the current State Building Code standards. Attorney Spinella did not see that his client could complain. He believes that would be a legal requirement. If anything less than fifty percent (50%) of the retaining wall fails, then maintenance and repairs can be done. If there is something less than fifty percent (50%), maintenance and repair does not require a complete rework of the entire wall.

Schorr Berman said that he was in agreement with that, saying that if half or more of the wall came down that it would have to be built to State Building Code standards.

Robinson said that if the Planning Board agrees with that, it should be eliminated as a point of contention. Chair Spanos said that **if the walls were built to the standard of the day** he does not have a problem with it. Vice Chair Romprey said that some of the walls were built to the State Building Code standards of the day, but some were not. Robinson said that if it falls under that fifty percent (50%) it falls under the State Building Code.

Vice Chair Romprey asked if it was clearly understood that it would be the State Fire Marshal’s Office that would be enforcing the State Building Code should that happen and the State Fire Marshal’s Office would be involved.

Attorney Spinella said that with respect to stone walls he did not think so.

Section Chief Anstey said that the State Building Code would be the governing document as to how they instruct enforcement of that statutorily. Enforcement of the State Building Code would either fall to the municipality [*if the municipality had adopted NH RSA 155-A*] or, if asked in

writing, the State Fire Marshal's Office could take on that portion of the enforcement. There is a process for it, but it would be the State if the State Building Code needed to be enforced.

Water Cisterns for Fire Control:

Attorney Spinella said, "If the Planning Board wants to hear this I have to act eloquent as I can." Attorney Spinella said there have been rumors about "The Landing" and it's not being "up to snuff". Attorney Spinella said his client has complied with the 2005 plan so far as the development has come to a particular stage. His client wants to do that now.

- Yes, there were four (4) ten thousand (10,000) gallon cisterns that have to be installed when this project is built out. His client wants to do that now. He has not built them out all the way.
- Yes, the approved plan had the roads going all the way out to the turnarounds, hammerheads later, beyond the four (4) season streams and that has not been done yet. That is why his client is asking to build temporary turnarounds.

Attorney Spinella said the project known as "The Landing" is not completely built out, but what has been built has been built to the standards that were approved by the Town. Attorney Spinella said when you hear around Town that "The Landing" is "cutting corners left and right", that is not accurate. That is the type of thing that he is hopeful "we can quell going forward". But it is his client's position that Saber Mountain Partners, LLC has complied with the approved plan to date, where it has constructed. The project simply is not finished. That is why Attorney Spinella and his client are here – to get Planning Board approval for an Extension to go forward with "The Landing".

Motion to open the public hearing.

Motion: Pat Romprey

Second: OJ Robinson

All in favor: (5-0)

1. Phil Rackley

Phillip Rackley introduced himself as a homeowner in Beechwood II at 170 Black Mountain Road and President of Beechwood II homeowners association. Rackley said the Beechwood II homeowners association is ***not*** a legal entity in and of itself in that Loon Mountain members established it as a legal association with the State. People who live there have ***informally*** held meetings and get-togethers, thinking that as a group of homeowners they would have a more effective say on issues like this.

Rackley said the Beechwood II homeowners have no hang-ups with "The Landing" or Saber Mountain Partners, LLC. Their concern is with Black Mountain Road. Black Mountain Road winds through the siding at just about the Mountain Club. It follows the river down for about a mile to a mile and a half, takes a right hand turn at "The Landing" and goes up the hill and exits onto East Branch Road.

According to Rackley, perhaps two (2) years ago at the Town Planning Board's urging, Saber Mountain Partners, LLC, resurfaced the upper half of Black Mountain Road. Actually the road

was not really resurfaced. Black Mountain Road was not repaired to the level of the specifications that were originally proposed in 2005 and approved by the Town either. Rackley had a copy of those specs that was drawn up and approved by the Town. What Saber Mountain Partners, LLC, did do was put a one inch (1”) coat of tar on top of Black Mountain Road, the upper part. (See Exhibit H attached Proposed Black Mountain Road Cross Section from 2005.)

According to Rackley, clearly that one inch (1”) of tar improved the road, but the holes were not filled in and the person who performed the work did the whole half of the road in one day with one inch (1”) of tar. There are places today that if you take a leaf blower you can blow off some of the pavement. But the road was “repaired” and the Beechwood II homeowners did appreciate it.

Rackley said Schorr Berman for Saber Mountain Partners, LLC, agreed to maintain the lower half of Black Mountain Road in a “drivable condition”. And for most part that is true, however, if you go down Black Mountain Road you will see holes. They have stakes to warn the snow plow drivers not to go that far over. There are places where the manhole covers are up a couple of inches above the pavement surface, so the road is drivable but not in good condition.

Rackley said, the Beechwood II homeowner’s concern is what happens when Saber Mountain Partners, LLC, reaches the end of their construction phase. When Saber Mountain Partners, LLC, ends their construction phase, will they repair that road to the original specs they proposed in 2005? The original 2005 specs not only requires Saber Mountain Partners to resurface the road, but also shim the sides, clean out the culverts and where the drains enter the road, the drains have to be restored or replaced.

Rackley said, on Black Mountain Road in Beechwood II, there are places today where two years ago the drain was so far out between the bottom of one of the side roads and Black Mountain Road, there was a big hole. Saber Mountain Partner, LLC, did fill in part of it, but they almost filled in the entrance to the drain that goes under the road. That is the Beechwood II homeowners’ concern. They are worried, going forward, will this be taken care of?

Rackley said at the Planning Board meeting last April, the Beechwood II homeowners were surprised to hear that the Planning Board agreed to reduce the bond that Saber Mountain Partners, LLC, had been holding for over five (5) years. The bond was for two hundred fifty thousand dollars (\$250,000) for the future repair of Black Mountain Road, at least some of it. Perhaps the Beechwood II homeowners should have been made aware of or notified of the Planning Board meeting when the Board made that decision. The bond was reduced by one hundred fifty thousand dollars (\$150,000) down to one hundred thousand dollars (\$100,000) for a job that they know would cost between fifty thousand dollars and seventy-five thousand dollars (\$50,000-\$75,000) And again the road was not brought up to the 2005 specs that were originally proposed.

Rackley said the Beechwood II homeowners are looking for some assurance that, in fact, the roads will be maintained in a drivable condition and brought up to that original 2005 set of specs, not a different set of specs that Schorr Berman for Saber Mountain Partners, LLC, says are “just

as good”. The Beechwood II homeowners would not want the Town to make any changes to the requirements in the specs for Black Mountain Road or the other requirements.

Rackley said that Schorr Berman and his attorney are concerned about the Town making changes in the requirements – making them more lenient. The Beechwood II Homeowners also do not want the Planning Board to make any changes in what the developer at “The Landing” is required to do. The Planning Board has to stop these people as well.

Rackley said that all of the people here at the Planning Board meeting are homeowners. Although some of them may talk about the issues a little different from Rackley does, as a group he would say that they all agree with what he just said. The Beechwood II homeowners believe that bond should be reinstated for the full amount and held until the job is done. Again, how do you know, what constitutes “completion” so that the job is done? The criteria for meeting the 2005 road requirements should be spelled out. Although Rackley does not know how, someone in the Town Office should figure it out.

2. Saber Mountain Partners, LLC’s Response

Vice Chair Romprey asked Rackley how he came up with the figure two hundred fifty thousand dollars (\$250,000). Attorney Spinella said that the sum of two hundred fifty thousand dollars (\$250,000) was the original number proposed for the bond in 2005. By the way, the initial discussions with Mike Sabourin at the time of the sale of the property by Loon Mountain to Saber Mountain Partners, LLC, supposedly Loon was going to put in two hundred fifty thousand dollars (\$250,000) toward that road also. Vice Chair Romprey said that he was not aware of that.

Schorr Berman said he had a significant disagreement with an earlier assertion of a statement of fact. Speaking to Vice Chair Romprey, Berman said that Romprey was on the Planning Board at the time “The Landing” was approved. Berman and Sabourin as Saber Mountain Partners, LLC, never agreed to rebuild the road to the 2005 town paving standards. The Planning Board proposed that, but Saber Mountain Partners did not agree to that proposal. According to Berman, what Saber Mountain Partners agreed to do was to bring the road back to the standards they were in before Saber Mountain Partners, LLC, came into place. There was a sense that their traffic in building “The Landing” would deteriorate those roads. Saber Mountain Partners were just meant to bring the roads back to the standards the roads were in before Saber Mountain Partners “came into place”.

Berman said the reason Saber Mountain Partners did the upper [Black Mountain] road and not the lower [Black Mountain] road is that they still have more development to do to get to “The Landing” on the lower road. Saber Mountain Partners never really used the upper road much, although in doing Queens Way they did, so they redid the upper road. Saber Mountain Partners still has to do the lower road.

3. The “Three Year Clock”

Berman said that if the Planning Board is concerned about the last lot being sold, that is not a consideration because the heavy equipment that Saber Mountain Partners uses to builds the roads

would be used only at the end of that project. As soon as the roads are finished then Saber Mountain Partners can pave the lower [Black Mountain] road and do the individual house construction. That is Berman's view of what Saber Mountain Partners' commitment was and when they have to honor that commitment. As soon as Buck Road and Back Forty Road that go across that four (4) season stream are completed, then Saber Mountain Partners will finish off lower Black Mountain Road.

Berman said that at that point in time the three year clock starts, after which time there will be a Homeowners Association at "The Landing" and everyone will be responsible for maintaining those roads. Not just homeowners who own lots in "The Landing", but "The Landing" and all other homeowners (including Beechwood I and Beechwood II) who are serviced by those roads will be obligated to chip in to keep those roads maintained. That was in the original agreement.

4. Reinstatement of the Bond for Black Mountain Road

Chair Spanos asked if Saber Mountain Partners, LLC, had any objections to reinstating the bond.

Berman said, "Yes, of course, because we did the part that was \$150,000 and, prorated, it was reduced to \$100,000 for the lower part of Black Mountain Road."

Vice Chair Romprey asked what the length of the part of Black Mountain Road was that was in question.

5. Al MacQuarrie

Al MacQuarrie said what was in question was about one mile total length of Black Mountain Road:

- Three tenths of a mile owned by the Town through Beechwood I;
- Three tenths of a mile into Beechwood II to "The Landing"; and
- Four tenths of a mile on Upper Black Mountain Road.

MacQuarrie handed out a copy of the 2005 specs to the Planning Board. (See Exhibit H attached.)

Town Manager/Planner Burbank said that he thought he heard testimony that there was an agreement between Beechwood II and "The Landing". Burbank asked if that was correct. Attorney Spinella said that he would testify that there is **not** an agreement on that issue.

6. Jack Daly

Jack Daly introduced himself as a fulltime resident residing at 186 Black Mountain Road and the vice president of the Beechwood II homeowners' association of which Mr. Rackley is president. The road in question certainly is one of their major concerns. In 2007, the Beechwood II homeowners' association had a survey done that indicated Saber Mountain Partners, LLC, would need one million dollars (\$1,000,000) in repairs to bring that road up to the same standards that the Planning Board members have in front of them, prepared by Horizons Engineering. (See Exhibit H attached.)

Daly addressed Horizons Engineering Engineer LaFrance, saying that he believed that LaFrance put together that standard himself or someone else at Horizon Engineering prepared that standard. Consequently, that is the road standard that is on the table. They are well aware that as time goes by and the road gets beaten up, it is Saber Mountain Partners' (i.e., Mr. Berman's) responsibility to maintain that road. Mr. Berman said so in the agreement that the Planning Board members see signed before them.

Daly said there is no agreement that the homeowners whose properties are serviced by Black Mountain Road in Beechwood II will ever own that road. He does not know of any homeowner who wants to own a road. The Beechwood II Homeowners Association represents approximately eighty (80) individuals, condo associations and single family homes, in that area and nobody has ever agreed to indicate that they would own that road.

Daly said there has been talk, rumor he guesses, that at one point there were covenants, which in many cases were never filed, that a Homeowners Association would take over the road. When Mr. Berman, or Mr. Berman and Mike Sabourin d/b/a Saber Mountain Partners, LLC, bought "The Landing" from Loon Mountain Recreation Corporation, they also bought or took on the responsibility for that road from Loon Mountain Recreation Corporation. When the eighty-four (84) house lots, the acreage there and the roads were conveyed to Saber Mountain Partners, LLC, the roads became the responsibility of Saber Mountain Partners. Just as it was prior to the transfer to Saber Mountain Partners, LLC, the responsibility for the roads fell to the previous owner, Loon Mountain Recreation Corporation which was the first or the entity that was required to maintain the roads, which they did.

Daly said the roads are falling into disrepair again, particularly the bottom of Black Mountain Road. The bottom of Black Mountain Road is the road which, as Mr. Berman indicated, his heavy construction equipment travels over frequently. Mr. Berman made a minor repair on the upper portion but when Mr. Berman tells him that six tenths of a mile only cost forty thousand dollars (\$40,000), that is not a great repair. Like Mr. Rackley said, if the Planning Board members went up there today, they will see that they can move part of that road with a leaf blower, which Daly has done. The company that did that repair is out of business.

Daly said that as an entity contiguous to "The Landing", the other concern to the Beechwood II homeowners association is the fire suppression system. Everyone saw what happened out west this past summer with tens of thousand acres burning and hundreds of homes being burned. Obviously, for anyone who lives up there, their greatest asset is their home. They certainly do not want to see anything happen to people's homes. Consequently when they heard what Chief Beard said and what the State Fire Marshal said, they were concerned that the fire suppression system up there is not adequate to protect their homes. If the Planning Board decides to move forward and grant the permit to Saber Mountain Partners, the Beechwood II homeowners association would certainly ask that the fire suppression system be made the number one priority up there to protect not only the homeowners at "The Landing", but the homeowners in the contiguous acreage. They would appreciate the Planning Board's consideration.

Chair Spanos asked if the Beechwood II homeowners are expecting “The Landing” to pay the entire one million dollar (\$1,000,000) cost of the road.

Jack Daly said the Beechwood II homeowners’ association members are expecting the owners of “The Landing” to live up to their obligation. Their obligation is spelled out in that document in front of the Planning Board, whatever the cost may be at the time. (See attached Exhibit H.) Is the amount of the bond adequate to meet that obligation? Was the bond that was adequate in 2007 not adequate today? They know that the cost of construction has increased, not only labor, but materials, etc. Now the cost of oils is down so maybe the cost of asphalt is down, he does not know. It is the nature of the beast. The cost of doing business rises and falls. Mr. Berman can pass some of these costs back onto the people who want to become homeowners in “The Landing”. The value in the land is what is in the land. If there are poor roadways to the lots, then there is not going to be a good market out there to sell those lots. Nobody wants to bad mouth Mr. Berman. Nobody faults Mr. Berman for wanting to make a profit. That is what Mr. Berman is in business to do.

Daly said that the Beechwood II homeowners want to protect their interests and part of those interests are to be protected by what Mr. Berman does in “The Landing”. One thing that the representatives of the Fire Marshal’s Office indicated was that certain repairs represent life safety issues. When people buy property or are involved in properties, there are certain repairs they need to make, like addressing safety issues, that do require that the structures be brought up to code.

Daly said that whether rock retaining walls present a life safety issue is for the Planning Board or the State Fire Marshal’s Office to decide. For example, if you buy a home and modernize a bathroom, and you do not have GFI’s (Ground Fault Interrupter) in there, that is a life safety issue. Retaining walls are life safety issues. Even if the builder is making less than a fifty percent (50%) structure repair on a retaining wall, is not that a life safety issue? Apply that reasoning to the requirement for smoke detectors and fire detectors, and carbon monoxide detectors. These life safety measures are not just required if someone is doing of a modernization project that affects more the fifty percent (50%) of the building. But by the same token it is a life safety issue. It is something that all of us have to think about.

Attorney Malia asked Mr. Daly and Mr. Rackley if they were suggesting on behalf of the Beechwood II homeowners association that if the Planning Board moves forward and ultimately approves an extension of “The Landing” approval, they would be asking the Planning Board to consider a condition which imposes a two hundred fifty thousand dollar (\$250,000) bond upon the developer to repair the portion of Black Mountain Road that goes through Beechwood II at the conclusion of his development. Daly said that Schorr Berman on behalf of Saber Mountain Partners, LLC, owns those roads so it is his responsibility.

Attorney Malia said, “Is that what you are asking for is a two hundred fifty thousand dollar (\$250,000) bond?” Daly said that he thinks the bond should be more than that.

Attorney Malia said, “But just for that portion of Black Mountain Road that goes through Beechwood II?” Daly said that was correct; the portion of Black Mountain Road that goes through Beechwood II is more than three quarters of that road.

Attorney Malia said, “You are suggesting that Mr. Berman is responsible for that because of this document that Horizons Engineering drafted?” Daly said that document was prepared on behalf of Saber Mountain Partners, LLC for “The Landing”. (See Exhibit H attached.)

Attorney Malia said, “And as part of “The Landing” approval from 2005?” Vice Chair Romprey confirmed that the document was part of the approval in 2005. Attorney Malia said, “We will go back and look at that notice of decision in 2005 that requires the developer to repair Black Mountain Road as it goes through Beechwood.” (See Exhibit A and H attached.)

7. Water Pressure for Fire Suppression

Hettinger asked Daly if he brought up the issue of fire suppression because of where Daly’s house is located. Daly receives water that is pressurized by the pumps at “The Landing” pump house. Daly said that his domestic water pressure is adequate and there is no problem with his water pressure.

Hettinger asked if Daly was questioning that flow rate may not meet fire standards. Daly said that the Fire Chief had performed a recent flow rate test up there. Daly would let the Fire Chief speak to that. Daly said that they know that in one area of Beechwood I there is only a one inch (1”) fire line.

Fire Chief Beard said there are two (2) hydrants up there; one has water pressure of 24 pounds per square inch (24 PSI) and the one at the lower end by East Branch Road has forty-seven pounds per square inch (47 PSI) of water pressure. In Beechwood II, which is serviced by the booster pump house from “The Landing”, those two (2) hydrants are at one hundred twenty-four pounds per square inch (124 PSI) of water pressure. He did not do a flow test on them because the pump house is only rated for three hundred (300) gallons per minute. He believes that the maximum on the booster pump is three hundred (300) gallons per minute which is less than or under the NFPA (National Fire Protection Association) requirements.

Hettinger asked Fire Chief Beard if he had fire flow on upper Beechwood Road. Fire Chief Beard said he did not have adequate fire flow on both of those two (2) hydrants.

8. “Three Year Clock”

Attorney Malia said, “I had a question for Mr. Berman, I didn’t quite follow what you were saying that once the roads cross the [four seasons] stream on Back Forty and Buck Roads, were you saying something about a three year clock starts?”

Berman said that it was his understanding based on all the documentation that Saber Mountain Partners, LLC, received from Loon Mountain Recreation Corporation when they purchased the property, that when the buildout is complete, (i.e., the “buildout” means the road buildout, not

the lot buildout), then that starts a three year clock after which every player on Black Mountain Road participates in the maintenance, snow plowing and everything else for Black Mountain Road. So it is to Saber Mountain Partners' advantage to finish those roads so that they can get that three year clock ticking.

Berman said that he recommends that before the Planning Board makes a decision, they should go back and look at the minutes for the various 2005 and 2012 Planning Board meetings because he thinks that the Planning Board will reach a very different conclusion about what Saber Mountain Partners' obligation is in terms of rebuilding those roads to the existing condition and not to the Town road standards or to "The Landing" conditions.

9. Abutter Bob Furey

Bob Furey introduced himself as being from 156 Black Mountain Road. He knows nothing about water pressure; however, at his property his water pressure is really good right now. His asked, if every lot at "The Landing" gets sold, would that lower his water pressure or would it remain the same?" Fire Chief Beard said he was not sure, because he is not a water engineer. He can tell Furey what kind of water pressure he has at the fire hydrant and he knows what the head pressure is going into the booster station.

Bob Furey asked if there was a way to find out. Fire Chief Beard said that he can do fire flows on any hydrant in town. However, if Furey wants to know what will happen if every lot approved at "Beechwood II" and "The Landing" was built out he would have to ask an engineer. Vice Chair Romprey suggested that Horizon Engineer Steve LaFrance answer the question.

10. Stephen LaFrance, Engineer with Horizons Engineering re: Water Pressure

Stephen (Steve) LaFrance introduced himself as an engineer with Horizons Engineering and the engineer of record of the original design for "The Landing" in 2005. As part of the design his firm prepared a booster pump station and a network of piping inside "The Landing" that also encompassed a portion of Beechwood II. The reason that they did that is because the first project that they did for Saber Mountain Partners was a three or four home development up on Queens Way that was on top of Beechwood II so they needed to increase the water pressure for the homes up there.

Engineer LaFrance said the water pressure problems up at Beechwood II were pre-existing. Those water pressure problems were there from the day that project (Beechwood II) was constructed. When Horizons Engineering did the work for Saber Mountain Partners for "The Landing", they improved the situation in a portion of Beechwood II, but not in the entire Beechwood II development. Depending upon where people live in Beechwood II, they have either really good pressure or they do not.

Engineer LaFrance said that the booster pump station that Horizons Engineering designed was designed for domestic flow only. It was not designed to provide fire protection. It has a peak flow rate of three hundred (300) gallons per minute which is enough to supply all the eighty four (84) units in "The Landing" plus the units in Beechwood II that are part of that water system.

When Horizons Engineering did the design they ran a hydraulic model which essentially models the flow rate in all the pipes in Town. They provided a copy of that model to the Town and the Town's engineer. Engineer LaFrance said that both LaFrance and the Town's engineer checked LaFrance's model and even at build out the peak flow rate for the domestic water at "The Landing" and parts of Beechwood II is three hundred (300) gallons per minute.

Engineer LaFrance told Daly that he will have adequate domestic water pressure at his house. The water pressure will drop a few pounds at peak demand times when everybody is running their water. That time of full build out is a ways down the road. What is true of any piping system is that the more flow you have through it the greater the pressure drops. The idea is you are trying to manage the water pressure between certain limits. Engineer LaFrance said the essential limits that they are trying to reach are a minimum of thirty-five (35), an absolute minimum of twenty (20) and a maximum of eighty (80). Engineer LaFrance said it is sometimes difficult to reach those minimum limits in the states like New Hampshire because for each foot (1') of elevation you either lose about a half a pound (1/2 lb.) of pressure or gain pressure as you go down in elevation. You are trying to keep the pressures within a range.

Engineer LaFrance said the reason there was a problem, or "perceived problem" with water pressure at "The Landing" is that in the design Horizons Engineering put pressure reducing valves in each home. The idea is that if you live in a place where the line pressure out in the road is greater than eighty pounds (80 lbs.), they put pressure reducing valve in the basement to dial that pressure down to no greater than eighty pounds (80 lbs.). What happens is, those valves are adjustable. Engineer LaFrance said there was a home in "The Landing" that had a pressure reducing valve that was improperly adjusted. For quite a period of time they only had twenty pounds (20 lbs.) of pressure at their home which for most people is not adequate. Engineer LaFrance said he actually has twenty pounds (20 lbs.) of pressure at his house but he always has and he is used to it. Most people are probably accustomed to something more than that so twenty (20) pounds does not seem like very much.

Engineer LaFrance said that when he got involved he went to the water pump station. He checked pressures, he increased the pressure in the pump station and there was no change in the water pressure at the home so he knew something was amiss. It turns out that the pressure reducing valve in the home was not adjusted properly. So Engineer LaFrance threaded the screw out, problem solved. According to Engineer LaFrance, that whole issue with the pressure was really nothing more than a pressure reducing valve in the basement of that home.

11. Stephen LaFrance, Engineer with Horizons Engineering re: Road Standards

Chair Spanos asked Engineer LaFrance if he had seen the road specs document before. (See Exhibit H attached.) Engineer LaFrance acknowledged that the initials in the lower right hand corner of the document ("SML") were his. Vice Chair Romprey asked if this was the document that was submitted for the repairs of Black Mountain Road. Engineer LaFrance said, "This was ten years ago and we talked about recollections. I did prepare that, I remember preparing that for Mike Sabourin who was Schorr Berman's partner at the time. I don't recall that coming up at the Planning Board meetings."

Vice Chair Romprey said that the document was part of the approved plans. Engineer LaFrance said that he did not remember that.

Chair Spanos said in the 2005 Planning Board meeting minutes it said Engineer LaFrance would be coming up with a reasonable standard and Spanos thinks that the Proposed Black Mountain Road Cross Section is what was proposed. (See Exhibit H attached.) Engineer LaFrance said, “I don’t remember. I do remember preparing that and remember some discussions with Mike Sabourin about the cost of actually constructing that cross section over the entire roadway and the fact that it was going to be expensive because you can see that we have not only stone line ditch, but underdrain and a relocation of all the electrical and cable TV conduits. Anybody that knows Beechwood development it is a nightmare. I was not involved in any of the discussions with the folks at Beechwood or Loon. And I don’t remember that coming up, but that doesn’t mean it didn’t happen. It was ten years ago.”

Robinson said when we are talking about the roads, there is some forgetfulness. There is some difference of interpretation. Robinson asked to read just the portions the Notice of Decision which is the defining document of that subdivision that relate to the road. Robinson read the following: (See Exhibit A attached.)

4. *Saber Mountain Partners, LLC will provide continuous maintenance throughout the period of development on Black Mountain Road from the intersection of East Branch Drive lower and to the intersection of East Branch Drive upper to mitigate the damage caused by heavy equipment.*
5. *In accordance with Article 5.07a of the Lincoln subdivision regulations Saber Mountain Partners, LLC will at the end of a (5) five year period, to begin upon final approval of the Site Plan, undertake to restore Black Mountain Road from the intersection of East Branch Drive lower to the intersection of East Branch Drive upper to standards defined by a road typical provided by Saber Mountain Partners, LLC to include drainage improvements, under drain, shim and over paving. This road typical will be included in the statement of responsibility for maintenance and repair as requested in section 5.08c of the Subdivision Regulations for the Town of Lincoln, NH. This document will be signed by the principals of Saber Mountain Partners, LLC and notarized.*
6. *In accordance with Article 5.07b of the Lincoln subdivision regulations Saber Mountain Partners, LLC will provide to the Town of Lincoln, NH a performance guaranty or bond for the restoration of Black Mountain Road in the sum of \$250,000 as defined in article XIII of the Town of Lincoln, NH Site Plan Review Regulations*
 - a. *As a condition precedent to approval of any site plan, in lieu of completion of on-or-off-site improvements, the developer shall file with the Board and Board of Selectmen before approval of the site plan an irrevocable letter of credit, a certified check, payable to the Town of Lincoln or a faithful performance bond running to the town and issued by a surety company acceptable to the Selectmen, in an amount of money equal to the total of the cost of construction for all streets, utilities and improvements, as specified in the site plan or such other surety acceptable to the Selectmen.*

- b. A performance agreement between the developer and the Town will specify the manner in which the on-or-off-site improvements will be completed and the specific manner in which the surety will be released.*

Robinson said that what he just read was the 2005 Notice of Decision which included the written specific requirements that the Planning Board was looking at. Instead of discussing what he said, she said or what should happen, Robinson believes this document is what the Planning Board needs to look at in the compliance part of this hearing. Were all those conditions complied with?

Engineer LaFrance said that he said that he did not remember, but he did not say that it did not happen. Clearly it is in the road specs document the Planning Board is looking at. Engineer LaFrance said the only thing he would suggest that the Planning Board check to see if that is the road cross section that ended up in the agreement. If it is, a deal is a deal.

12. Schorr Berman re: Saber Mountain Partners LLC Road Standards

Chair Spanos asked Berman if he was willing to rebuild the road to that standard. Berman said that he needs to go back and get confirmation that this document was the correct cross section. His clear recollection was that Saber Mountain Partners, LLC, never would have touched the roads. Berman remembers a clear discussion at the 2012 Planning Board meeting (he was not at the 2005 meeting) that he was to rebuild the road to what the road was like before his trucks began. Berman remembers talk about “continual damage”. Berman said he was “not doing continual damage”.

Berman said that when Saber Mountain Partners, LLC, stopped building the Back Forty Road to the stream, their trucks are not traveling on those roads. The roads were in very, very bad shape. Berman said Saber Mountain Partners took upper Black Mountain Road back to a much better condition than it had seen in decades. Saber Mountain Partners have not “done” lower Black Mountain Road just because his recollection is that Saber Mountain Partner’s obligation to “do that” was after Saber Mountain Partners finished the roads because the residents of Lower Black Mountain Road did not want Saber Mountain Partners to finish the road and then have Saber Mountain Partners’ trucks cause damage when Saber Mountain Partners was finishing off construction.

13. Schorr Berman re: Amount of Bond

Vice Chair Romprey asked Mr. Berman what his recollection of the original surety was that was supposed to be posted. Berman said that he was not at the 2005 meeting, but his understanding was that the bond was for two hundred fifty thousand dollars (\$250,000) which Saber Mountain Partners, LLC posted. Berman said that when Saber Mountain Partners did the upper Black Mountain Road there was a pro rata calculation done by the Town engineer. The calculation said that one hundred fifty thousand dollars (\$150,000) was released just by measuring the road by square footage. A bond for one hundred thousand dollars (\$100,000) remained.

14. Town Manager/Planner Burbank re: Bonding for Infrastructure Other Than Roads

Town Manager/Planner Burbank said that he wants the Planning Board to address bonding. Town Manager/Planner Burbank said that since he has been here he has not seen a requirement for bonding for infrastructure. Burbank said he believes that bonding for development infrastructure is very important because it goes to some of the issues that brought the Planning Board here today as far as compliance is concerned (not the expired permit). According to the minutes, in 2005 the Planning Board clearly said they wanted bonding on the internal infrastructure, Black Mountain Road included. Vice Chair Romprey cut in with “Black Mountain road was separate.”

Town Manager/Planner Burbank said that he wanted to put in the record that the Planning Board should have required a bond for the rest of the required infrastructure improvements. Had a bond for the rest of the infrastructure for the development been in place the Town would probably be in a different place than it is today, with all due respect to Attorney Spinella. The Town would have had a bond in place to finish the required infrastructure improvements for the development. Burbank would like to encourage the Planning Board to take a careful look at making those infrastructure bonds a requirement in the future.

15. Abutter Rackley on Specifications for Black Mountain Road

Rackley said that Berman’s former partner, Mike Sabourin, of Saber Mountain Partners, LLC, was at that meeting also. Originally what was proposed by the Beechwood II Homeowners Association (Al MacQuarrie did a lot of work on that), was that the developer should bring that road up to “State specs” or some specific road standards or road specifications. Rackley said the Planning Board came back and said, “This road has been here all this time and has been in bad shape for a long time. Requiring the new developer to bring that road up to a certain standard is not fair to the builder. We should have something else.”

Rackley said that the document with road specs that the Planning Board approved is what Saber Mountain Partners’ Mike Sabourin and his Engineer, Stephen LaFrance proposed. (See Exhibit H attached.) What the Planning Board has agreed to is a very, very reduced set of road specifications. Saber Mountain Partners and their engineer did propose the culverts and so on, but really they proposed just resurfacing. Saber Mountain Partners did not fill holes or fix the broken pavement and do any of those types of things before they resurfaced the road. Those repairs were not made before they resurfaced upper Black Mountain Road, but that should be done on lower Black Mountain Road.

Rackley said, sixty-four (64) homeowners in Beechwood II, and homeowners in Beechwood I go across that road in places. However, all of the traffic going to “The Landing” goes across that road so ongoing maintenance is required all the time, not just when Saber Mountain Partners, LLC, are building a home.

16. Abutter Brad Dalbeck on Roads and Fire Suppression

Brad Dalbeck introduced himself as owning a house on 2 Buck Road in “The Landing” that he built with Mike Sabourin and Schorr Berman of Saber Mountain Partners, LLC. Dalbeck said he has a lovely home. He is very happy where he is. He has no water pressure issues. His stone walls are fine. He also owned a property at Loonwood I from 2010 on before he built his present home. So he has been driving Black Mountain Road for probably about 15 or 16 years. He does not have a problem at all with Black Mountain Road. The only damage that happens to Black Mountain Road is caused by two things:

- Snow cats that go up there to use the cross country trails; and
- Mother Nature. Mother Nature washes those roads out all the time.

Dalbeck said he does not know who fixes the roads, but the roads do get fixed.

Dalbeck said that he understands that if there is a fire issue, his only concern about owning a house up at “The Landing” right now is if his house is on fire. Is there enough water to put it out? It sounds to him like Mr. Berman is going to address the water issue if this permitting goes through. Dalbeck was under the understanding that is why this meeting was being held. His only comment is that he does not have any issues with “The Landing”. He is very happy up there. He understands there are people who cannot get building permits to help “our development” grow and that is a shame. Dalbeck is hoping that the Planning Board will continue to allow these permits so that Mr. Berman can honor the things he has talked about here and to continue “The Landing” to become what it should be.

17. Abutter Ivan Saitow

Ivan Saitow said he is done for now.

18. Stephen LaFrance, Engineer with Horizons Engineering re: Road Standards continued...

Strickon asked Engineer LaFrance about the April 27, 2005 Planning Board minutes where it read:

Mr. LaFrance briefly went over the drainage cross section upgrades, explaining that the underdrain will be 4” perforated pipe approximately 2½ to 3’ feet underground surrounded by crushed stone. He noted the cracking in the road is caused because the water table is high and the gravel that supports the asphalt is wet. He noted the under drain will drop the water table keeping the soil under the pavement dry and strong. Mr. Grass asked if the drainage improvements would take place for all of Black Mountain Road including the Town owned portion. Mr. LaFrance responded, “Yes.”

Strickon said to Engineer LaFrance that this looks like what he was talking about earlier. Engineer LaFrance said it sounds that way, but he does not remember.

19. Attorney Scott Burke Representing Abutters Michael and Gina Donovan

Attorney Scott Burke introduced himself as an attorney representing Michael and Gina Donovan who purchased the lot at 23 Back Forty Road. Attorney Burke said that also depicted on the plan that was provided are temporary turnarounds in the lower left corner. (See Exhibit I attached.)

Attorney Burke said, “In listening to Saber Mountain Partners, LLC, the developers of ‘The Landing’ they make it sounds like they are playing the victim. They describe themselves as being victimized and getting all sorts of assurances from the town. Quite frankly, since he has been involved in this matter since last month, he thinks it absolutely the other way around. The Donovan purchased a lot at ‘The Landing’ last winter. They and other homeowners up at ‘The Landing’ are actually the victims. Berman should be giving assurances to these property owners and to the Town and actually not just assurances, but completing on those assurances.”

Attorney Burke said, “Saber Mountain Partners actually have cut corners. They make it seem as though this a several phase subdivision. They act like they have completed one phase and they just have not gotten to these other phases. That is not the situation at all.”

Attorney Burke said “Saber Mountain Partners promised people who purchased at “The Landing” a safe environment. In 2005 that safe environment required:

- cul-de-sacs for emergency vehicles to turn around; and
- forty-thousand (40,000) gallons of water in four (4) cisterns.

That forty-thousand (40,000) gallons is required to fight a fire at just one (1) home. You do not wait until all eighty-four (84) homes are built and say, then for the last ten (10) homes we will add another ten thousand (10,000) gallons. It is set up so you need all that water to fight a fire.”

Attorney Burke said he was a firefighter in Amherst Mass for eight (8) years in the eighties (1980’s). He can tell the Planning Board that one of the most nerve wracking things being a pump operator is when you have hoses out and you have firefighters fighting a fire and suddenly you cannot get water to your pump truck to be able to continue the fight. There is nothing more nerve wracking than that. So for the Saber Mountain Partners to say now, “We’re willing to do that”, is disingenuous.

Attorney Burke said there is no reason why those things (turnarounds & cisterns) should not have been completed right away. With all respect to the Town or the people who participated in those decisions, Attorney Burke does not understand how the Town could issue permits or occupancy for some of those homes without those basic safety requirements being met.

Attorney Burke said the Town and Town Manager/Planner Burbank did the Donovans a favor by rejecting their request for a Land Use Permit in October. Because, if the Donovans started construction and built a home and these problems all surfaced a year from now they would be living in a home in an area that he, personally, has great concerns for their safety and he knows they would as well.

Attorney Burke said that before the Town issued any permits at “The Landing” the roads should have been completed. His clients have no issue with hammerheads versus cul-de-sacs. The type

of turnarounds is for the Planning Board to decide. However, the roads with appropriate means for emergency vehicles to turn around should have been constructed as soon as one home went up on the street. All the promised cisterns should have been built already.

Attorney Burke said the his clients, the Donovans, closed on their lot in “The Landing” last January. Then the Donovans spent tens of thousands of dollars in architectural fees and engineering fees. They did not get what they bargained for. They expected to be building a home in an environment that had that safe infrastructure in place.

Attorney Burke said the Donovans did not bargain to have a temporary turnaround that was going to require the use of their driveway for emergency vehicles to make the turn. The Donovans should not have to go along with a temporary turnaround in their driveway like Saber Mountain Partners are suggesting. Given the fact that Mr. Berman allowed the subdivision approval to lapse and allowed the bond to expire, the Donovans simply do not have any faith that any promised work is going to be done. Attorney Burke said perhaps the Town allows a temporary turnaround that gets constructed a year or two down the road. However, the Donovans want to make sure they have a constructed Back Forty Road all the way across the four (4) season stream. Attorney Burke said the Donovans do not have any confidence given what has happened over the last ten (10) years that Back Forty Road ever will be completed.

Attorney Burke suggested that the developers of “The Landing” lost their right to complain about the 2005 standards and meeting those standards because they have not met those standards. Maybe if the developers could have appeared before the Planning Board with “clean hands”. Maybe if they had constructed all four (4) cisterns as required, but they have not met the requirements of the Planning Board. Attorney Burke suggests to the Planning Board that because the developers have not met the requirements the developers should be required to do the right thing now.

Attorney Burke said that from what he has read, even with the four (4) cisterns, with the two (2) cisterns that were promised back in 2005 being relocated, is still not an optimum situation for being able to fight a fire at “The Landing”. When the four (4) cisterns were agreed upon, the size and number of cisterns was based upon the expectation that the homes at “The Landing” would be between two thousand (2,000) square feet in size to five thousand (5,000) square feet in size. Attorney Burke said he has seen those numbers used in two different places. The Town’s own engineer used a calculation assuming the homes would be two thousand (2,000) square feet. The Town Planning Board now knows that the homes being built up there are between seven thousand (7,000) square feet and forty thousand (40,000) square feet. Attorney Burke suggests that four (4) ten thousand (10,000) gallon cisterns is not going to be enough to provide fire protection; that is cutting corners. Attorney Burke said, “So when the developer of ‘The Landing’ stands before you and says they have not cut corners, they have.”

Attorney Burke said that the Planning Board now has the chance to have this development “done right”. The developers of “The Landing” do not come before the Planning Board having completed everything they were supposed to have completed in the time that they were supposed to have completed it. Attorney Burke would like to see the Planning Board make sure that things are done right before his clients are in a position to have to invest more money in something that

may not be completed or may not be safe. Attorney Burke said that despite what Mr. Dalbeck said, he actually feels badly for people who have invested a million plus dollars (\$1,000,000+) to live up there and then are faced with this situation. Nobody should have to be faced with that situation.

20. Attorney Spinella's Rebuttal Argument for Saber Mountain Partners, LLC

Attorney Spinella said he wanted to go back to a discussion of the November 4, 2015 agreement. On that date that they all met. They left that meeting, not only with a document signed, but with the understanding that the Donovan's Land Use Permit would be issued. They further understood that the Donovans would sprinkle the building and have a sprinkler system in the building that they would ultimately build.

Attorney Spinella said that in October, the Donovans were denied the right to that permit. On November 4, 2015, we left that meeting with the understanding it would happen. They understood that they would not get a "Certificate of Occupancy" until the two (2) remaining ten thousand (10,000) gallon cisterns were installed, but that would not have delayed the granting of the permit. When we left that day all that was needed was the commitment to put in those remaining two (2) ten thousand (10,000) gallon cisterns.

Attorney Spinella said that he is hearing now that the Donovans are feeling unsafe. The agreement reached November 4th was reached with input of Section Chief Ron Anstey and State Fire Marshal Bill Degnan. The agreement was approved at that time by Fire Chief Beard as well. Attorney Spinella said that all he can say is that the experts have weighed in on what is safe. If the Donovans now say they do not feel safe, it will not be true. The basis for that feeling needs to be informed. Whether or not the Donovans feel safe needs to be considered by the Planning Board in light of what the experts have agreed, both State and local.

Attorney Spinella said he thinks that what the Planning Board is hearing from Attorney Burke about safety concerns is perhaps a setup for a private skirmish between his client and Attorney Burke's clients (the Donovans). He does not think that this matter between the Donovans and Saber Mountain Partners, LLC should concern the Planning Board. Attorney Spinella does not want to go there now. All he has to say is that it really should be "mooted" with respect to the buyers' safety concerns.

Attorney Spinella said that he does not think that his client is cutting corners. Everything is done over time. His client does not instantaneously build out roads. The roads are not built beyond the four season streams today. That does not mean the homes that are up there now or are going to be built next year are not safe. The people at the November 4, 2015, meeting agreed that temporary turnarounds were adequate protection for the homes that are there and for the development.

Attorney Spinella said he does not see that the Planning Board or he and his client should be getting into or be advising what the experts have come up with so that one or two of the owners up at "The Landing" can feel safer. Attorney Spinella thinks that the Planning Board needs to

consider what the experts have said. What the experts have said has been written into a signed agreement. Attorney Spinella thinks that should be the only consideration.

21. Planning Board's Response to Arguments – Adequacy of Water for Fire Protection

Hettinger asked if there was a date of completion in that agreement. Attorney Spinella said there is no date of completion in the agreement, but that the Planning Board can impose in all cases, a reasonable requirements for dating and timing of completion. Attorney Spinella said he assumed the completion date is one of the things that he and his client are there to discuss.

Hettinger said that the Donovans had a good point about the drawback of not having the four (4) cisterns put in. If you have a fire in one (1) house, you need the water from all four (4) cisterns to fight the fire. The amount of water in the four (4) cisterns is not needed for eighty (80) houses, it is needed for a fire in only one (1) house. Attorney Spinella said that when they met on November 4, 2015, everyone was comfortable with the next two (2) cisterns going in. There was no timetable for it.

Hettinger said that he was talking about since 2005 the developers have put only two (2) cisterns in. Saber Mountain Partners now have more than five (5) or six (6) homes up there. "Talk about cutting corners! That is cutting corners!"

Vice Chair Romprey said to Attorney Spinella that the Donovans are every bit entitled to their opinion as Attorney Spinella was to his opinion. How the Planning Board looks at the situation is entirely up to the Board.

22. Engineer LaFrance Response re: Fire Suppression

Saber Mountain's Engineer LaFrance said, "We had some pretty lengthy discussions about fire protection and fire flow volumes and such. When we had one of the first meetings here at the town office, I was there, [*Section Chief*] Ron [*Anstey*] was there, both Rons [*Section Chief Anstey and Fire Chief Beard*] were there. We talked about fire flow volumes, not necessarily fire flow in gallons per minute but total volumes. [*Fire Chief*] Ron Beard was of the opinion that ten thousand (10,000) was certainly not sufficient to fight a house fire and I'm hearing the same thing from Donovan's attorneys. I just wanted to put forth that we did run some calculations to determine required fire flow volume. It is actually based, interestingly enough, not only on the square footage of the home but the total volume of the home."

Saber Mountain's Engineer LaFrance continued, "So I ran the calculations for what was commonly called "The Bridge House", what it is called, is the house down over the hill. That house is about seven thousand four hundred (7,400) square feet. It's a big house. And if you look at the NFPA 1142, it references not only the house but the garage space and any enclosed space including decks. So I added up all that area and the volume that we provided up there. At ten thousand (10,000) gallons [it] was sufficient for that home. We can argue all night about whether it is or not, but I can tell you that based on the code, [*Section Chief*] Ron Anstey can confirm or argue against it, but I think you will find that the code says that it is adequate. So I'm not suggesting that four (4) cisterns would not be better than one(1), clearly it would. But I just

want people to understand that based on the code the cisterns that were proposed were adequate.” Engineer LaFrance continued, “We have had a lot of discussion about where they should be located and I think we are all in agreement that they should be moved. But I just wanted to make that clear because it’s a showstopper.”

Hettinger asked Engineer LaFrance when he made that calculation. Engineer LaFrance said, “I made it in 2005 and again a couple of months ago when we were talking about flows required up there. When I did it in 2005, I didn’t use the seven thousand four hundred (7,400) square foot home. I think I used [a] four thousand five hundred (4,500) square foot home. There was some confusion there because I took a footprint and people did not understand that it was the footprint times two and a half (2.5) for two (2) stories plus the attic. So there was quite a bit of going around in circles, but I just wanted to make a point that what we originally proposed in terms of volume was adequate.”

Chair Spanos asked if when Engineer LaFrance did the calculations he assumed the house was fully involved. Engineer LaFrance said that he did not know how they come up with that volume. In the State Fire Code it just says that you are going to need to provide a certain volume of water based on a certain volume of home. So the Fire Code does not talk about whether the house is fully involved or not.

Vice Chair Romprey asked what Engineer LaFrance was using for a square footage ratio. Engineer LaFrance said seven thousand four hundred (7,400) square feet.

Vice Chair Romprey questioned Engineer LaFrance again, asking if that was the figure used in his calculations now, what square footage he used in 2005. Engineer LaFrance said what he said was in the meeting minutes for 2005. Engineer LaFrance said he thought it was two thousand two hundred (2,200) square feet times two (2) for two (2) stories, so about four thousand four hundred (4,400) square feet. Vice Chair Romprey said that basically there is about a sixty to seventy percent (60% - 70%) difference between four thousand four hundred (4,400) square feet and seven thousand four hundred (7,400) square feet. Engineer LaFrance agreed, but said that based on a seven thousand four hundred (7,400) square foot home the volume of water in four (4) ten thousand (10,000) gallon cisterns that was being proposed is sufficient.

23. Schorr Berman re: Saber Mountain Partners LLC “Cutting Corners”

Berman of Saber Mountain Partners, LLC, said he wanted to address the continued comments that Saber Mountain Partners, LLC, are “cutting corners”. Berman said he was referring to the 2012 meeting, which was the meeting where the Planning Board approved converting the cul-de-sac turnarounds to hammerheads. The Planning Board had three meetings:

- Berman said that prior to the meeting when the hammerheads were approved, there was actually a meeting before that in mid-2012 when the Planning Board gave Saber Mountain Partners permission to continue on Back Forty Road. So that was their third overall Planning Board meeting.
- The second Planning Board meeting in 2012 is when the Planning Board approved the conversion from cul-de-sac turnaround to hammerheads. In the minutes to that meeting

the Planning Board recognized that we were only building a road to the four season stream.

- During the first meeting it didn't come up that they did not build the turnarounds that they promised and they did not build the cisterns as they promised. This fact did not come up in the second meeting in 2012 either. The Planning Board clearly understood that they were only building those roads back to the four (4) season stream.

Vice Chair Romprey said that was not his recollection. Berman said Romprey was quoted in those meeting minutes.

Berman of Saber Mountain Partners, LLC continued that with new Fire Chief Ron Beard coming aboard, Chief Beard has a new view of what is adequate for fire safety and what is not. Berman said, "That is what set us down this path that led to the November 4, 2015, compromise that his Attorney Spinella was describing." Berman said that he is "just really riled at the idea that we did not fulfill our obligations under those permits". Berman said that no one expected them to build those turnarounds and build those cisterns until those roads were completed. And as late as October of 2012 the Planning Board knew what their plans were.

24. Town Attorney's Advice

Town Attorney Malia said that Berman's comments are not entirely relevant to the decisions that the Planning Board has to make.

To set the record straight, Attorney Malia respectfully disagreed with Attorney Spinella's suggestion that the parties left the meeting on November 4, 2015, with the understanding that the Donovans would be issued a building permit. Attorney Malia said that given the fact that the parties are unclear about what they agreed to on November 4, 2015, it is not surprising that they are now unclear about what happened back in 2005.

Town Attorney Malia said it would have been inappropriate and unfair to the Donovans for the parties to talk about the Donovan's property on November 4, 2015, so there really was very little discussion about the Donovan's property on November 4, 2015. The only purpose for the November 4th meeting was to address fire suppression and fire protection.

Chair Spanos said that it appears that the Donovan's proposed house would have been grandfathered from the sprinkler requirement. Attorney Malia said the house would have been, but that the Donovans initially had volunteered to sprinkle their house anyways before they withdrew their request to build a house up there.

Attorney Malia said that he was not going to say that the Donovan's name did not come up because everyone knew that Donovans had applied for a permit and it had not been issued as of yet. But, Attorney Malia disagreed with Attorney Spinella that they left that meeting with the understanding that the Donovan's permit would be issued.

Town Attorney Malia said that all of the parties participated in the November 4th meeting in good faith in an effort to try and come to a resolution of the fire suppression issue. The parties

were trying to come up with a design that would allow Fire Chief Beard to have some confidence in his ability to fight a fire up there. Attorney Malia said he does not think that the document that was put together at the November 4, 2015, meeting is binding on the Planning Board. Attorney Malia said, in fact, the agreement contemplated the need for everybody to come back to the Planning Board to have the Planning Board review the framework for an agreement on fire suppression that the parties came up with on November 4th. Attorney Malia told the Planning Board that he did not want the Planning Board to think this agreement effort was binding on the Board; the agreement effort was a suggestion on how the fire suppression issue can be resolved.

25. Abutter Ivan Saitow

Ivan Saitow introduced himself as owning a residence on 3 Buck Road. Saitow said he feels like he almost agrees with the Donovans. When Saitow and his wife bought into “The Landing”, they were promised a lifestyle. They were promised an architectural rendering of an Adirondack house. They had pages and pages of guidelines and covenants that they had to abide by. They had 500 paint chips that they were allowed to pick from. They were told what they could plant. They were not allowed to do anything to cut trees. They had setbacks that the houses had to live within.

Saitow said that here they are, five (5) years into “The Landing”, and not one covenant has been adhered to, not one. Saitow now lives in a community where the architect can do whatever he wants; he can erect a steel skyscraper if he wants. That is what they live with now. Saitow said that the worst offender to him is the house right across the street which is a four (4) color house and the house almost touches the setback limits. The property owner removed countless numbers of trees to get that place onto the lot. Saitow said that is what he wakes up every morning to live with and to look at.

Saitow said that he has a serious concern with any deal that the Town strikes with the developers of “The Landing”, that the developers will not be acting in good faith. That is his history with “The Landing”. At the beginning, Saitow was the biggest booster of “The Landing”. Saitow said he fought Phil Rackley and Al MacQuarrie, to give “The Landing” a break, telling them that the developers would fulfill their obligations. Saitow said he is very sorry he did that now. Saitow said he was wrong.

26. Town Attorney Peter Malia & Fire Chief Ron Beard about Fire Safety Concerns

Town Attorney Malia said he wanted to talk about that November 4th agreement a little bit more. The agreement contemplated that Saber Mountain Partners’ Engineer Steve LaFrance would derive some engineering plans to place two (2) cisterns on the property and also design a couple of temporary turnarounds. Attorney Malia said he just saw those plans fairly recently. He thought the Planning Board would find it helpful to hear from Fire Chief Beard and maybe Section Chief Ron Anstey as well if they have had a chance to look at those engineering plans. Starting with the cisterns, are the cisterns sufficient in their minds?” (See Exhibit I attached Plans for Fire Truck Access & Water Storage Tank Locations.)

Fire Chief Beard said that the cistern placement will work fine for him. Fire Chief Beard said it was a negotiating process. Chief Beard said he had to weigh a lot of factors and plan for shuttles, that kind of thing. Chief Beard said he believes he can work with what the parties have come up with in that document. Chief Beard said he will have to pull in some more resources to help supplement the cisterns a little bit. In order to negotiate in good faith and work with the developer, Chief Beard believes that he can do a good job with what is detailed.

27. Location of the Proposed Temporary Turnarounds Near Donovan's Lot

Town Attorney Malia asked Fire Chief Beard if the suggested temporary turnarounds were okay. Fire Chief Beard said he could work with the proposed temporary turnarounds. Fire Chief Beard said he was not aware that Mr. Donovan was not happy with the Fire Department using the front of his lot to turn around, so he is not sure how the Fire Department will go forward with that or what is going to happen there. Fire Chief Beard said he needs the turnarounds for the fire trucks.

Attorney Malia asked the Donovan's Attorney, Scott Burke, if the proposed temporary turnaround that Engineer Stephen LaFrance designed near the Donovan's property was even feasible anymore. Attorney Burke had mentioned that the proposed temporary turnaround requires the use of his client's property. Attorney Burke said, "As drawn, it uses the driveway of my clients property and is not acceptable."

28. Fire Suppression Standards Versus Negotiated Fire Suppression Measures

Attorney Burke also commented that it just seems as though there is a difference between what the Fire Chief Beard went along with as part of negotiations and what Fire Chief Beard thinks should be up there from a life safety perspective. Attorney Burke suggested that the Planning Board hear what the Chief's position is. What would the Chief would like to have up there which may be different than what was negotiated by the parties as part of a back and forth. There are two different standards there. Attorney Burke said he could understand why Fire Chief Beard wanted to negotiate something to appease the developer, but that decision should be up to the Planning Board as to what the Board wants to do in terms of negotiating. Attorney Burke said that the Planning Board should know what the Fire Chief would want for coverage.

Vice Chair Romprey said that the Planning Board has a report. Town Manager/Planner Burbank said the report is from Fire Chief Ron Beard and Section Chief Ron Anstey. Vice Chair Romprey asked if that report was public record. It is a public record. (See Exhibit F attached.)

29. Location of the Proposed Temporary Turnarounds Near Donovan's Lot Continued

Attorney Malia asked Saber Mountain Partners' Attorney Spinella if he or his clients wanted to comment on the feasibility of the turnarounds in answer to the Donovan's property. Saber Mountain Partners' Engineer LaFrance showed an overall plan of the area to the Planning Board. (See Exhibit I attached.)

Engineer LaFrance said, "The two (2) top exhibits here are the two (2) cistern locations. I guess we won't focus on those at this point. The two (2) bottom ones are the turnarounds that are

proposed for Buck Road and Back Forty [Road]. Focusing on the Back Forty turnaround as it effects the Donovan's, this is their lot. This is Back Forty Road. What we had proposed to do is to use the driveway apron as part of the turnaround because we knew it was going to be in that location somewhere. I had provided this to the Donovan's and said if you have any issues, let me know. At that time they didn't have any issues. I guess if there are concerns, there is no reason why we can't move this over. Put this portion of the turnaround beyond their driveway and actually back in and make this a cut into the uphill embankment."

Engineer LaFrance said, "When I said earlier when [Fire Chief] Ron [Beard] and I were working together and we had a draft, this is exactly why I called it 'a draft'. I don't think what I'm hearing tonight is a 'show stopper'. If the Donovans don't want us using any portion of their driveway apron, even though it is within the right-of-way, not on their property, that is not an issue. We can go beyond their driveway apron. Create the turnaround a little bit further beyond their driveway. Anytime you do one of these, there is kind of a an interim process and you go back and forth. 'Yeah, I like it', 'No, I don't', to close in on a solution. So I think, I feel confident that we can do something here that meets [Fire Chief] Ron [Beard]'s needs and addresses the Donovan's concerns – at least with respect to the cul-de-sac and turnaround location."

Vice Chair Romprey asked if there was some concern that these people are building a million dollar (\$1,000,000) home and they might not want this [turnaround] in their yard or in front of their house. Attorney Spinella said, "I think we just heard that concern and we are going to address it."

Abutter Gina Donovan said that the location of their driveway might change because they have not built the house yet. Engineer LaFrance said that his plan was a place to start. Engineer LaFrance thought that he had involved all the players, but apparently he did not involve all the necessary players. Things change, concerns are raised and he addresses them. Engineer LaFrance said that he does not need to use the Donovan's driveway to design a temporary turnaround for emergency services.

Abutter Mike Donovan said when they purchased the lot on Back Forty Road, it was not intended to be at the end of the road. The end of the road is further down Back Forty Road where the cul-de-sacs were later turned into hammerheads. Mike Donovan said he did not want a lot at the end of the road where the hammerhead was going to be, but that is now where the turnaround is being proposed. Mike Donovan said he and his wife object to them over the use of the driveway; even if the location of the turnaround is shifted, it is still located in front of their property. Mike Donovan said that is not where the turnaround is located in the 2005 approved plan. Donovan said he and his wife strongly suggest the Planning Board to reject this proposal and require the road to be finished and that the developer put the hammerhead where it is supposed to be, not in front of their lot. They purposely did not buy a lot in the end of the road. They bought a lot in the middle of the road next to the stream. So Donovan's objections are based on more than just the use of the driveway as a temporary turnaround for emergency vehicles.

Attorney Spinella said, “These turnarounds are specifically, temporary. There will come a time when they are taken out and they are gone, when the road goes beyond the four season stream.” Chair Spanos asked what the timeline was for completion of the roads. Attorney Spinella said, “I don’t have that timeline now, but I do understand that it is going to take a year plus before the Donovans could possibly construct their home. We should take into account that there isn’t going to be a long period of time when they are going to be living in a home staring at the temporary turnaround. I can’t give you an exact date. That is something I’m sure the board will want to discuss. How temporary is temporary? But it is temporary.”

Berman said, “This is the first feedback that we have heard from Donovans. I called them and didn’t get my calls returned after I supplied them the draft documents. I asked [Engineer] Steve [LaFrance] to contact them and I received an email back saying they are thinking about it. It wasn’t until last week that we heard that they were unhappy with the turnaround. I concur with their sentiments that ‘temporary’ does not give them a lot of comfort. What [Engineer] Steve [LaFrance] and I were just talking about is can we move the turnaround to the lot before the Donovan’s. And we haven’t had a chance to talk [about] if that would satisfy them at all. Or to talk with [Fire Chief] Ron [Beard] to see if it was close enough to the end of the road if it were in the lot before Lot 23*. We are willing to work this out, it’s just this is the first feedback for it.”

**[Note: Berman really meant Tax Map 132, Lot 39. The E-91-1 Address is 23 Back Forty Road. Berman is using the E-9-1-1 street numbers instead of the tax map and lot numbers.]*

30. Timeline: How Temporary is “Temporary” for the Proposed Turnarounds?

Chair Spanos asked Berman how temporary is “temporary” to Berman. Berman said, “If we have no further lots sales, which this year because of the activities we have had no lot sales, it’s going to be a long time. When we start selling lots again, then there is the pressure to complete the roads. You are talking about three quarters of a million dollars (\$750,000) to finish those roads. We need lot sales.”

31. Attorney Burke Responds to Berman’s Allegation that Donovan Did Not Respond

Donovan’s Attorney Burke said, “Just to set the record straight, Mr. LaFrance provided my client with this draft plan on November 24th at 6:52AM. At 4:20 [PM] Mr. Donovan sent the following email.”

*“Steve,
Thank you for your email, we really don’t have any specific comments on your plans. Gina and I have concerns about temporary solutions. Whether the town will even accept temporary solutions. A lack of compliance by Saber with the original subdivision plans. The lapse last April with the approval of the subdivision. And the lack of guarantees by Saber that the subdivision will be built out as contemplated by the original approval. I assume that we will be provided adequate notice of the Planning Board hearing once it is scheduled.”*

Donovan's Attorney Burke said, "If that is not letting Saber know what the position of the Donovan's was, I don't know how else to put it to them."

Chair Spanos asked the lawyers to not go back and forth with their situation.

32. What is the Berman d/b/a Saber Mountain Partners, LLC Timeline?

Town Attorney Malia asked Saber Mountain Partner's Attorney Spinella two timeline questions:

- Planning Board Chair Spanos asked what his client's timeline is regarding when the Planning Board could expect full completion of the roads.
- For the sake of argument, assuming this all went forward, would Saber Mountain Partners build the two cisterns and the two temporary turnarounds right away?"

Berman said, "The discussion we had at that meeting was that we can't do it now, of course, because winter is on us. But as soon as spring we will begin construction. As soon as the frost is out of the ground we can start building those [*what?*]. That was our intention and that is what we discussed. We were not going to wait a couple of years. That was our obligation and we were going to execute against it."

Attorney Malia asked Berman whether his answer relates to both cisterns as well as both turnarounds. [*No answer.*]

Motion to close the public hearing

Motion: Pat Romprey

Second: John Hettinger

All in Favor: (5-0)

Attorney Malia said to the Planning Board, "You have received a lot of testimony and some new evidence and it might make sense for you to continue this to your January meeting to digest everything that you heard. There is also an unresolved issue regarding the turnarounds.

Most of the room got up to leave, very noisily and most were talking in the back of the room.

Chair Spanos "Hey Guys, quiet down!"

Romprey "HEY!"

Chair Spanos "Five minute recess?"

Robinson, "No."

Robinson slams his hand on the table and yells, "YO, we are still in session here."

The room slowly quiets down.

Robinson said that we are here tonight for two reasons:

- One is on a compliance hearing on a subdivision; and
- The other is a request to extend the term of approval of the subdivision.

Robinson said that he did not think that it was appropriate for the Planning Board to take action on the extension when all of the members of the Board have not fully understood the terms of compliance, specifically:

- The Statement of Responsibility regarding Black Mountain Road;
- The performance bond that covers the streets, utilities and improvements of the whole subdivision; and
- A performance agreement between the developer and the Town regarding the onsite and offsite improvements to be completed in a specific manner in which the surety will be released.

Robinson said that to him those are three huge issues. He does not fully understand them all himself.

Robinson said he understands the Donovan's issue with the turnaround and what does "temporary" mean. Robinson said that the Planning Board members need to know not only how long is "temporary", but how will the Board be assured that the work will be completed and on what terms.

Robinson said that the terms of this "Statement of Responsibility", the full performance bond and the performance agreement are crucial to understanding the compliance before Robinson votes for an extension.

Hettinger agrees that some of the facts need to be straightened out.

Strickon said that there are too many loose ends. If just one matter was outstanding that would be one thing, but there isn't just one outstanding matter. There are multiple outstanding matters here.

Vice Chair Romprey made a motion that the Planning Board find Saber Mountain Partners, LLC at "The Landing" not in compliance.

Hettinger said that Saber Mountain Partners, LLC, are not in compliance with the original approval.

Robinson said that he was not ready to decide that yet. Robinson said that going back to what Attorney Spinella said earlier tonight and then said a couple of weeks ago to the Board of Selectmen:

- It is not fair for the Town to change the location of the goal posts.
- It is the Town's responsibility to treat all developers equally.

Robinson said that with those two principles in mind, he is questioning whether or not the developer should be found to be out of compliance.

Robinson said there was discussion tonight that people were not clear on what the conditions of approval were. Rather than voting on this being in compliance or out of compliance tonight, Robinson would like to put the burden back on Attorney Spinella and his client to come in and show the Planning Board that they are in compliance. If things like performance bonds and performance agreements and statement of responsibility were not enacted in 2005 like they were agreed to be, that would give them time to come forward to the Planning Board with those.

Robinson suggested that the Planning Board not vote on this matter tonight, but rather the Board point these things out and get them to come before us and show us that they are in compliance.”

Motion to find the applicant is not in compliance.

Motion: Pat Romprey

Second: John Hettinger

All in favor: (4-1)

B. 6:00 PM Public Hearing on an Application to Extend Planning Board Approval for “The Landing at Loon Mountain”.

For the Public Hearing, the PB will hold a public hearing to determine whether or not to approve the Applicant’s Application to Extend Planning Board Approval of Site Plan Review (SPR) on the formerly approved, now expired, plan for Site Plan Review (SPR). Upon a finding by the Board that the application meets the submission requirements of the Land Use Plan Ordinance and Site Plan Review Regulations, the Board will vote to accept the application as complete, and, if the Planning Board finds the application to be complete, then a public hearing on the merits of the proposal will follow immediately. Interested parties are invited to attend, in person, or by agent, to show why the developer’s request for an extension should or should not be granted. Should a decision not be reached at the public hearing, this application will stay on the Planning Board agenda until such time as it is either approved or disapproved.

Attorney Malia reminded the Planning Board that the other reason the Board is here is the Applicant’s Request to Extend the Expired Approval. Chair Spanos said that once the Request for an Extension is denied, the Applicant has to start over.

Vice Chair Romprey made a Motion To Deny Applicant’s Request for an Extension of the Planning Board’s Approvals.

Robinson asked the Planning Board why they needed to vote on this tonight. In his view, the big issue is, are they in compliance. The Planning Board just voted as a majority of the Planning Board that Saber Mountain Partners, LLC, is not in compliance. The next question is, do we give them time to change that, to come back to us and bring in what they need to be in compliance.

Vice Chair Romprey asked how does the Planning Board give them an extension if they are out of compliance. Robinson said that he is not saying the Planning Board should vote to give it to them. He is saying the Planning Board should not vote on it.

Vice Chair Romprey said he is not withdrawing his motion.

Motion To Deny Applicant’s Request for an Extension of the Planning Board’s Approvals.

Motion: Pat Romprey

Second: None.

Motion fails.

Motion was not seconded; the motion died.

Attorney Malia asked the Planning Board if anyone wanted to move to continue the public hearing on Saber Mountain's Request for an Extension of their Approval."

Chair Spanos said that the Board should move to continue the public hearing to a specific date. Chair Spanos asked what the Planning Board has on the agenda for the next Planning Board meeting.

Robinson asked if the Planning Board should talk to the applicant about his desire to come forward with the next step: being found not in compliance versus a plan to come into compliance.

Vice Chair Romprey said that the applicant has to be in compliance before the Planning Board can grant them an extension.

Chair Spanos said that the Planning Board will have to re-notice the hearing if we do not continue it to a date certain.

Town Manager/Planner Burbank suggested continuing the public hearing to the next Planning Board meeting on January 27, 2016. Burbank said that if the Planning Board continued the public hearing on the Applicant's Request for an Extension to that date that will give the applicant a month for a lot of stuff to happen.

Vice Chair Romprey said that if Saber Mountain Partners, LLC comes into compliance, he does not have a problem with it.

Attorney Malia said the Planning Board is continuing the public hearing on their Request for an Extension of the Approval to January 27, 2016 at 6:00PM. Attorney Malia asked the Planning Board if between now and then whether they wanted to:

- Give the applicant some guidance as to what the Board is going to be looking for, or
- Give them a deadline as to a number of days in advance of that hearing that the Board would like to receive information so that the Board is not presented with something at the last minute.

Chair Spanos said that the Planning Board would like to receive something at least ten (10) days in advance.

Attorney Malia asked the Planning Board what they were looking for to receive from the applicant.

The Planning Board would like to receive the following at least ten (10) days prior to the hearing (all taken out of the 2005 Notice of Decision) **with a timeline to include dates when these things will be completed.**

1. The Statement of Responsibility;
2. Full Performance Bond; and
3. Performance Guarantee.

Chair Spanos, Vice Chair Romprey and Hettinger all said they needed to see a timeline “with dates” of full completion. Vice Chair Romprey said that the Planning Board needed a timeline showing when these things will be done.

Chair Spanos said that when the applicant receives an estimate as to how much compliance with the Notice of Decision conditions will cost, the Planning Board will need to see the estimate and the Planning Board can require him to post a bond for that amount.

Attorney Malia asked Attorney Spinella if he could supply these things to the Planning Board by January 17, 2016.

Attorney Spinella said, “I think so but I would like to see a written statement of it. If the minutes come out quickly that will suffice, assuming they are accurate. Otherwise you can issue me something.”

Town Manager/Planner Burbank said that these are going to be extensive minutes tonight. He did not know how soon his staff could complete them. The Town can get those into draft form. We can try and get Attorney Malia and Attorney Spinella together to get you something. Would that be sufficient? Attorney Spinella said, “Sure.”

Attorney Malia asked Robinson to clarify it for Attorney Spinella.

Robinson said the Planning Board is looking for:

1. Statement of Responsibility regarding Black Mountain Road. Those are in section 5.08 subdivision regulations for the Town of Lincoln from 2005. He does not know if the wording is the same or the numbers have changed.
2. A performance bond that covers the cost of construction of all streets, utilities and improvements as specified in the plan. He assumes that a performance bond is outstanding for all of those matters to cover and would need an estimate of a total cost. The one for Black Mountain Road is two hundred fifty thousand dollars (\$250,000).
3. A performance agreement between the developer and the Town that will specify:
 - a. The manner in which the onsite or offsite improvements will be completed; and
 - b. The specific manner in which the surety will be released.

Attorney Malia asked if Robinson read that from the 2005 Notice of Decision. Robinson said that was correct.

Chair Spanos said that he is concerned that those dollar figures in the Notice of Decision are based on 2005 costs. Vice Chair Romprey said that for clarification, Robinson is reading from the Notice of Decision from 2005 which is the document of record.

Chair Spanos said that, as defined in Article 13 of the Town of Lincoln Site Plan Review Regulations, the Planning Board should actually look that up and come up with a formula or a more updated value.

Because he will be deeply involved in this matter, Town Manager/Planner Burbank asked the Planning Board to confirm that the estimated costs were going to be based on today's prices and not 2005 prices. Burbank wanted to be sure that Attorney Spinella understands that the Town is not going to try and look back at 2005 prices. Attorney Spinella understood.

Attorney Malia asked Romprey to verify what the applicable road standards are. Vice Chair Romprey held up a "Typical Cross Section" and wanted to verify that Typical Cross Section in the 2005 Plan and Approval as depicted is what the Applicant agreed to do.

Town Manager/Planner Burbank asked the Planning Board to clarify that they required the applicant to post a surety for all of the roads and infrastructure in "The Landing". Is it the Board's opinion or do we know if this standard carried into "The Landing"? Because it will be key in determining what needs to be done. Town Manager/Planner Burbank wanted it clarified.

Chair Spanos said that surety is for Black Mountain Road and whatever "The Landing" is in 2005. The 2005 approval specifies the road standards.

Town Manager/Planner Burbank asked Engineer LaFrance if he had a typical road section inside "The Landing", Black Mountain Road aside. Engineer LaFrance said, "Earlier this week or late last week, [*Planning and Zoning Administrator*] Carole [*Bont*] emailed me and asked me and I sent you folks the plans for 2005. Page 29 is a typical cross section for all the roads." (See attached Exhibit J Sheet 29 of March 2005 plans) (Note: Typical Road Cross Section information chart about road widths was added after April 27, 2005 meeting, however, change was not dated.)

Attorney Malia said that the Planning Board voted to:

- A) Find that the developer is not in compliance.
- B) Continue the developer's Request for an Extension of Subdivision Site Plan Approval to your January 27, 2016 Planning Board meeting at 6:00PM,
- C) Require that any material that anybody wants the Planning Board to consider at that meeting should be provided to the Planning Office by [4:30 PM close of business] January 17, 2016.
- D) The developer shall specifically address the compliance issues raised in the 2005 Notice of Decision with completion dates.
 1. The Statement of Responsibility for Black Mountain Road.
 2. The Performance Bond.
 3. The Performance Agreement language set forth in the 2005 notice of decision.

- E) The developer shall confirm that the typical road cross section that was provided to the Planning Board tonight is the cross section that applies to Black Mountain Road outside of “The Landing”.

Motion to continue the request for an extension of subdivision site plan approval to January 27, 2016 at 6:00PM.

Motion: OJ Robinson Second: Pat Romprey

All in Favor: (5-0)

V. CONSIDERATION of meeting minutes from:

- December 9, 2015

Town Manager/Planner Burbank asked to have his name put in as both Town Manager and Planner to better identify his role when acting as the Town Planner.

Motion to approve the meeting minutes from December 9, 2015 with grammatical corrections, removal of appendix A and inclusion of a pointer to RSA 674:41 and the change from Town Manager to Town Manager/Planner for Burbank records.

Motion: Paula Strickon Second: OJ Robinson

All in Favor: (5-0)

VI. CONTINUING AND OTHER BUSINESS (Staff and Planning Board Member/Alternates).

- A. Review language for proposed changes to Land Use Plan Ordinance
- B. Review language for proposed changes to Site Plan Review Regulations

1. Gated Communities Prohibited

The Planning Board discussed some of the proposed changes to the Land Use Plan Ordinance, starting with gated communities.

Chair Spanos read the wording of the proposed changes and thought that the way it was worded even a single family home would not be allowed to have a fence.

Strickon said that if it was a question of security in a public space. As an example, Clark’s has to fence in the bears.

Robinson said that what had been talked about in previous meetings was that private homeowners could gate off their house. Strickon agreed and added that anything that was multi-family could not be gated.

Chair Spanos asked about individual businesses. Robinson said that we did not address businesses. There was a brief discussion about why businesses would want to gate off their businesses and Grant said that businesses are not communities.

Strickon asked what happens to gates already in place. Chair Spanos said that gates already in place are legally grandfathered.

Town Manager/Planner Burbank said that anything you do is subject to lawyer interpretation but if the Planning Board wants to prohibit gated communities, they have to start somewhere. The standard language is “gated community” and can the word “community” means houses, not businesses or industrial parks. It means “communities”.

Robinson said that depends upon how people interpret it. If someone told me that I could not have a gate on the Whales Tale, I would come before the Planning Board and say Whales Tale is not a gated community. Chair Spanos said that Whales Tale is not going to gate off the parking lot.

Town Manager/Planner Burbank said that even if you wanted to gate the parking lot, it is your parking lot and Whales Tale is only one business. He was not sure that the definition of a “gated community” will not cover it.

Hettinger said that the way the proposed change is written it allows for the Zoning Board to make exceptions.

Chair Spanos said that ordinance reads “Town Meeting 2015” and it should be “Town Meeting 2016”. Town Manager/Planner Burbank said that error should be changed.

Grant said that the Town has gates on the cemetery. Other Board members asked if a cemetery was a “community”. Grant said a cemetery was not a “community”, but the proposed language reads “to prevent the general public from having access to any part of town”. Hettinger asked if you could get out of the back way of the cemetery. Grant said yes, there is not a gate on it, but there is a fence. That is a part of the Town as opposed to a part of a “gated community” or private property.

Town Manager/Planner Burbank thinks the matter can be overthought. Anyone who is building in a community like Forest Ridge or South Mountain knows what you are talking about when it is referred to as a “gated community”. Forest Ridge is a perfect example because there is no gate there yet. To get a gated community started, the proposed language in the LUPO will put a message out. This will direct the developers who want a gated community to come into the Zoning Board of Adjustment and the Planning Board. Adding the proposed language to the LUPO would give the Town a mechanism to review it.

Grant said that he would think that a campground could be a “community”. Town Manager/Planner Burbank said that the Town of Lincoln does have campgrounds. It was determined that the campground is not currently gated.

Chair Spanos said that if there is any question, the developers would have the opportunity to go to the ZBA to state their case and obtain a variance.

Chair Spanos said that we have the changes to the Site Plan Review requirements on page 4.

Town Manager/Planner Burbank questioned if that sheet was to be inserted into 4.

There was a brief discussion about the changes. The Planning Board members will review the proposed changes at their leisure and the proposed changes will be discussed at the next meeting on January 13, 2016.

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.

VIII. ADJOURNMENT

Motion to adjourn at 8:44 PM

Motion: OJ Robinson Second: John Hettinger

All in Favor: (4-0)

Respectfully submitted,

Wendy Tanner,
Planning and Zoning Recorder

Dated: December 22, 2015

James Spanos, Chairman

Exhibits A thru L can be seen at
The Town Hall Monday thru
Friday between the hours of
8:00 AM and 4:30 PM
(except Holidays.)