

**LINCOLN ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
WEDNESDAY – APRIL 4, 2018 – 6:00PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

APPROVED

Present: Chair Jonathan Ham, Paul J. Beaudin, Delia Sullivan, Alternate Myles Moran, Alternate James Martin II, Alternate Stephen Noseworthy

Members Excused: Raymond D'Amante, Jack Daly

Members Absent: None

Staff Present: Planner Carole Bont, Recorder Ellyn Gibbs

Staff Excused: None

Consultants: Attorney Peter J. Malia, Jr., Hastings Malia, P.A., 376 Main Street, P.O. Box 290, Fryeburg, Maine 04037-0290

Guests:

- **Dr. Brian Holub DVM**, Countryside Veterinary Hospital, 289 Littleton Road, Chelmsford, MA 01824, and "Real Estate Developer" d/b/a Brian E. Holub 2011 Trust, whose addresses are: 10 Eagle's Nest Road, Westford, MA 01886, and 22 Liberty Drive #5B, Boston, MA 02210 and owner of 23 Hemlock Drive, Lincoln, NH 03251 (Map 121 Lot 001) which is in South Peak Resort. Investor in New Jefferson Holdings, LLC that owns LO Parcel 3 (Map 408, Lot 001), Pond Woodland Loop (M115 Lot 010), Woodland Loop LO (Map 114, Lot 0800001-00-00000), and Parcel 2 Forest Ridge (Map 115, Lot 017).
- **Attorney Jill Zimmerman**, 10 Eagle's Nest Road, Westford, MA 01886 and 22 Liberty Drive #5B, Boston, MA 02210 and significant other of Dr. Brian Holub, DVM.
- **Jim Spanos**, resident, Mountaineer Motel, 374 US Route 3, Lincoln, NH 03251, Realtor for Coldwell Banker Old Mill Properties, Chair of the Planning Board
- **Sandra Catania**, resident, PO Box 896, Lincoln, NH 03251-0896
- **Fire Chief Ron Beard**, Health Officer, Code Enforcement Officer, and resident of 27 Hanson Farm Road, Map 106, Lot 013.

- I. CALL TO ORDER** by the Chairman of Zoning Board of Adjustment; announcement of excused absences, if any, and seating of alternates(s), if necessary.

Chair Ham brought the meeting to order at 6:00 PM. The following members were recused: Ray D'Amante, Jack Daly, Don Landry.

Alternates Myles Moran and James Martin II were seated.

- II. CONSIDERATION** of regular meeting minutes:

- None

- III. NEW BUSINESS**

- None

III. CONTINUING AND OTHER BUSINESS (Staff and Zoning Board Member/Alternates).**A. 6:00 PM. Lincoln Zoning Board of Adjustment (ZBA) Administrative Appeal per RSA 676:5,ii(b)**

- 1. Case #:** 2018 ZBA AA 2018-01
- 2. Location:** 23 Hemlock Drive (Tax Map 121, Lot 001)
General Use (GU) District
- 3. Applicant:** Brian E. Holub
22 Liberty Drive #5B
Boston, MA 02210
- 4. Applicant's Agent:** Daniel J. Pasquarello, Esq.
Pasquarello/Fink, LLC
185 Devonshire Street, 3rd Floor
Boston, MA 02110
- 5. Property Owner:** Brian E. Holub. Trustee
Brian E. Holub 2011 Trust
22 Liberty Drive #5B
Boston, MA 02210

Petitioner is appealing a decision of the Planner made on January 9, 2018, to the ZBA. Petitioner requests ZBA grant an administrative appeal to be presented to the ZBA on **Wednesday, March 7, 2018 at 6:00 PM** in the Conference Room of the Lincoln Town Hall on 148 Main Street, Lincoln, NH 03251.

Petitioner is Brian Holub. Property owner is Brian E. Holub. Trustee, Brian E. Holub 2011 Trust. Holub will be represented by Daniel J. Pasquarello, Esq.

The petition was filed in connection with an application for a Land Use Authorization Permit (LUP) filed by Brian Holub to remodel the interior space of his basement in order to add two bedrooms and two bathrooms in a single-family home constructed on property located on 23 Hemlock Drive, Lincoln, NH (Tax Map 121 Lot 001) located in the General Use (GU) Zoning District.

The Administrator denied the Petitioner's second Application for a Land Use Authorization Permit (LUP) because (1) the application was incomplete; (2) Petitioner did not submit any written authorization from his Homeowner's Association for the proposed alterations; and (3) Petitioner did not submit plans of sufficient detail to determine compliance with the Town of Lincoln's Land Use Plan Ordinance. No plans for the areas as proposed to be finished were submitted with the application.

Petitioner argues that the Town has "no basis to require authorization of a homeowners'/condominium association approval as a condition for approval" for a Land Use Authorization Permit. Petitioner argues that the remodeling of interior space is an "As-Of-Right" project; the Town's authority is limited to collecting water and sewer tap fees and bedroom impact fees.

ACTION: Upon a finding by the ZBA that the application meets the submission requirements, the ZBA will vote to accept the application for a variance as administratively complete.

ACTION: If the ZBA finds the application to be complete, then the ZBA may conduct a public hearing on the merits of the proposal immediately or schedule a public hearing at some future date established during this meeting.

ACTION: The ZBA will vote to approve, approve with conditions or disapprove the application. Should a decision not be reached at the public hearing, this application will stay on the ZBA agenda until such time as it is either approved or disapproved.

Presentation

Planner Carole Bont

Planner Bont stated at the beginning of the presentation that Dr. Brian Holub had just received his approval from his homeowners' association called "South Peak Resort Community Association" (HOA) and the "South Peak Resort Architectural Review Board" which are the entities that he needed approval from before Planner Bont could issue him a Land Use Authorization Permit to finish his basement with two bedrooms and two bathrooms for a total of eight hundred thirty-five square feet (835 sq.ft.) of living area. Planner Bont had issued Dr. Holub his permit just prior to the start of the ZBA meeting.

Appellant Dr. Brian Holub

Appellant Dr. Holub passed out a letter addressed to the ZBA to be read and recorded in the minutes. The letter was dated April 4th, 2018 and was sent by Facsimile (FAX) via Dr. Brian Holub and addressed to the ZBA. The letter is signed by Ed Wendler, who represented the South Peak Resort Community Association as well as the South Peak Resort Architectural Review Board; the letter was also signed by Timothy Clark who represents the CRVI South Peak TRS Inc. as the successor declarant and current owner of undeveloped land in the South Peak Resort. (See **attached Exhibit A.**) Dr. Holub read the letter to the ZBA.

Appellant Dr. Holub said he received his permit from South Peak Resort Community Association and the South Peak Resort Architectural Review Board several hours before the ZBA meeting. Appellant Dr. Holub said he would like to withdraw his administrative appeal to the ZBA and consider the matter closed.

Questions from the ZBA

Paul Beaudin asked when Holub had submitted his plans.

Planner Bont said she received Dr. Holub's plans earlier today, with all the numbers required, such as the square footage of the finished space. Planner Bont said that Dr. Holub also submitted a copy of that same plan where it appears that Mr. Wendler signed off on the plan for the basement itself, which Planner Bont then attached to the Land Use Authorization Permit.

Appellant Dr. Holub said these numbers were actually included with his first submission, as well as four years ago.

[Note: The initial plans submitted in 2014 - four years ago - included one bathroom and one bedroom in the basement. The new plans are for two bedrooms and two bathrooms for a total of 835 square feet of in the basement.]

ZBA members commented that it was too bad that the staff had to compile all of the materials associated with the South Peak Resort development, including minutes and Notices of Decision and now did not have to use the materials. Planner Bont said that even though the ZBA does not

need all of the materials collected in preparation for tonight's hearing, Paul Beaudin's asking town staff about all of the approvals and minutes pertaining to the South Peak Resort was very helpful for Town staff, because the Town staff has now organized all of the Planning Board minutes associated with South Peak Resort and the various Notices of Decision that the Planning Board issued over the years. Prior to this appeal, the Town did not have an organized set of minutes and Notices of Decision for the South Peak Resort development.

Motion to accept Holub's withdrawal of the application for appeal.

Motion: Beaudin

Second: Sullivan

Motion carries: (5-0)

V. OTHER BUSINESS – ZBA members/alternates, Zoning Board Staff

The ZBA considered the minutes from March 7, 2018.

Motion to accept the minutes from March 7, 2018.

Motion: Beaudin

Second: James Martin II

Motion carries: (5-0)

Town Attorney Malia said that the Rules of Procedure state that the ZBA must elect a chairman, vice chairman and clerk by majority vote at a ZBA meeting during the month of April. The Board decided to wait to complete this vote when more members are present.

Town Attorney Malia said that going forward he will be working with the requirements for homeowners and condominium association approvals applications and make sure that it is still a requirement the Town will want to keep in place. If so, solidify it by working it into the land use ordinance.

Planner Bont said that she and Town Manager Burbank have been discussing holding a public hearing with the Planning and Zoning boards and some officers from homeowners' associations in order to get input. The Town does not want to get involved with making legal interpretations of HOA's declarations and conditions, however the Town also does not want to torpedo the homeowner and condominium associations because enforcement of the HOA and condominium association conditions is what keeps the values of the homes in those associations up. The HOA and Condo Association requirements tend to be more aesthetic-related whereas the Town's requirements are more safety-related or related to good neighbor relations, such as setbacks and building heights.

Beaudin said he understood that a condominium or homeowners' association owns the common areas, walls, exteriors, and things like that. Planner Bont responded it is complicated as South Peak had several phases. Not all parts of South Peak Resort will be comprised of single family homes. However, in Phase I of South Peak Resort where Dr. Holub's house is located, Dr. Holub and other property owners own their lots completely. However, the roadways and other infrastructure is owned by the HOA. Beaudin said that Dr. Holub used different terms for South Peak, calling it "association" in one place and something else in another. Beaudin could not find anything in the Town's notices of decision for South Peak Resort about any square footage requirements, only aesthetic requirements. He could not find anything about having a 6,000 square foot maximum.

Planner Bont said one of the issues with researching the engineering associated with South Peak Resort and is that when the Alteration of Terrain Permits were issued by the State they eventually did not have enough room to store the documentation so they threw out the first four thousand (4,000) applications they received because they had no storage. Consequently, we cannot look

back at the Alteration of Terrain Applications and Permits to see what those calculations were. According to the current NH DES staff, back when they first did those calculations all the State cared about were the roads – were the roads going to stay where they were designed without major losses due to erosion. Second, according to the current NH DES staff, at that time the NH DES staff paid little mind to the size of impervious surfaces associated with the houses and driveways and the impact that would have on erosion. Thirdly, when these projects in Lincoln were coming to the State to get their alteration of terrain, the engineers at the time represented that the size of the homes would be about 2,040 square feet of living space. None of the houses up there are that small. Fourth, then the engineers made their calculations for addressing the stormwater issues associated with the development those calculations were based on using gravel roads and gravel driveways. The Town's ordinance, from the beginning has required paved roads and paved driveways from between ten feet (10') and fifteen feet (15') in from the roadway. How can you go back and re-do that Alteration of Terrain now?

Planner Bont said the Town is trying to address the problems that have arisen as a result of those calculations, partially, by passing a stormwater management ordinance, because homes of people located further down on the slope are experiencing difficulties with damages caused by diverted stormwater runoff.

Planner Bont said all of the water displaced by the homes and paved surfaces on the upper lots is going down to the property of the people located below, such as those homes near the bottom of Mansion Hill, the Lincoln Community Center, Beechwood Acres, and more. The Town is trying to address the problem after the fact, but in terms of going back to see if the developments have exceeded the requirements on their Alteration of Terrain Permits, the Town cannot even address it. To add to the problem, after the 4,000 the NH DES threw out, NH DES has only been keeping the cover sheet for most cases. NH DES staff said they started to keep only the huge cases which, for the most part, are not up in the northern part of NH.

Beaudin said we should look at if we decide to leave that end about the association on that application is the part where it says, "I understand that the town will not enforce any private covenants that varies... enforcement of private covenant is up to the party given enforcement rights under the declaration." If we're not concerned about the association, we probably don't want to make that statement.

Town Attorney Malia said Dr. Holub previously believed there was no homeowners' association to get approval from. Town Attorney Malia said there was a letter from Attorney Dean T. Lennon, [Marcus, Errico, Emmer & Brooks, P.C., 45 Braintree Hill Office Park, Suite 107, Braintree, MA 02184-8733] in Boston that started out stating they represent South Peak Community Association, Inc. Town Attorney Malia does not want the Town to get involved in determining and interpreting the laws of homeowners' associations. Attorney Raymond D'Amante addressed this in a letter to the Planning Board from January 2018. He talked about the different stages of a condominium development as well. It begins with conceptual, then gets submitted. Even if the ZBA is just dealing with a condominium it can be difficult to determine if there's a controlling board for a homeowner to get a signature from. Basically, in a condominium you own from the walls in and the condominium association and its members own from the walls out.

Martin asked what the benefit is of having the homeowners' association's approval on the Town's end. Planner Bont said the Town staff is here all the time, and the officers and members of the

homeowners' associations are not, so they look to us to be the first line of defense as they are not in Town all the time. Martin said that should be their responsibility, not ours.

Planner Bont said up until now contacting and getting approval from the homeowners' associations or condo associations has been very easy. She uses a spreadsheet with everyone's contact information to contact the head of the associations or the property managers who in turn contact the heads of the associations.

Town Attorney Malia asked what if they submit a different set of plans to the homeowners' association than the plans they submit to us, such as in Holub's case. Planner Bont said that one set of plans went to the homeowners' association and a different set came to the Town. When she and the Public Works Director and the Fire Chief went to inspect we found the owner had constructed something different in the upstairs than what they represented on their construction plans submitted. A storage area had been converted to a bunkroom.

Beaudin asked Town Attorney Malia how the HOA gave Dr. Holub a permit to build a structure that does not meet with the HOA requirements. The HOA's whole premise was that they did not want Holub to build a house that was over 6,000 square feet of living space. Then the HOA allowed him to build the structure with living space of over 8,000 square feet. The basement was already heated, plumbed, and roughed-out space.

Planner Bont said Cypress Real Estate Advisors who owns the undeveloped portions of the South Peak Resort under the name CRVI South Peak TRS, Inc., is trying to unload that property, so this issue may have been a sore spot they did not want to have to deal with when they are trying to sell their properties.

Martin reiterated that this is the problem of the HOA, not the Town board.

Planner Bont does not know what the extent of the HOA rules and regulations are, but she had heard that owners are not allowed to run an AirBnB over there. Dr. Holub now has exterior access to every one of his bedrooms and bathrooms in the basement as well as there being an eight-bed bunk room. The house seems to be structured as an AirBnB. She believes this may have been the concern of some of the other owner up there.

Martin said he sees their concern, but it should still have nothing to do with the Town.

Planner Bont said the only interest the Town would have is the reason the value of those properties is so high is that the HOAs control the aesthetics. The houses look a certain way and are in a controlled environment. This increases the value, it spreads out our tax burden to a greater extent.

Beaudin said what if someone wanted to build a 2,000 square foot log cabin? This does not meet the HOA guidelines.

Martin said that when people buy such a property, they automatically agree to follow the guidelines.

Fire Chief Beard said that he visited Holub's home and saw the new construction in the basement. Holub was going forward with installing bathrooms and bedrooms without paying the water, sewer and tap fees. That is the only money that comes into the Town to support the Town's water and sewer infrastructure.

Martin said anyone could do this, not only in a HOA. So, there is still no benefit to being involved with association approvals.

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 ZBA will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

VIII. ADJOURNMENT

Motion to Adjourn at 6:35 pm.

Motion: Ham

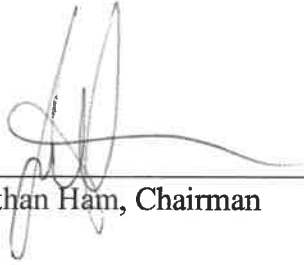
Second: Beaudin

Motion passes. 8-0

Respectfully submitted,

Ellyn Gibbs, Recorder

Date Approved: ____/____/____



Jonathan Ham, Chairman