

LINCOLN BOARD OF SELECTMEN'S

APPROVED

MEETING MINUTES

JULY 6, 2021 – 4:00PM

LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN, NH

Board of Selectmen Present: Chairman, OJ Robinson, Vice Chair, Tamra Ham and Selectman Jack Daly

Staff Present: Town Manager Burbank, Fire Chief, Ron Beard, and Administrative Assistant, Jane Leslie

Public Present via Zoom: Laura MacLean, Todd MacLean, Arthur Remillard, Corinne Mariano, Mark Kling, Carrie Blair, Tim Clark, Matt Burke, Dave Beaudin, Tony Volicek, Kirby McBride, Mark Ehrman, Kevin Shone, David Friedman, Steven Picardo, KD Agesse, Arlan Pool, Dave Beaudin, John Kyrios, Justin Hupp, Paul Beaudin, Jeremy Gonsalves, Mark Bogar, Shannon Dauksis, Grania Gallagher, Jess Grasshaff, Sarah Amico, and B. Norton.

Public Present: Roger Harrington, Steve Loynd, David Frahm, Matt Frahm, Peter Cherico, Fred Stearf III, Michael Muto, Bob Murhall, Dennis Gaudet, David Yager, Bill Power, Nich Dufour, Paul Rodgers, Maureen Parkin, Luke DeWolfe, Nathan Fennessy, Peter Wason, Brent Druin, Taylor Beaudin, and Attorney Derek Lick (Suloway & Hollis).

I. CALL TO ORDER

Chairman Robinson called the meeting to order at 4:00 pm.

II. CEASING THE ISSUANCE OF ALL SOUTH PEAK BUILDING PERMITS

Chairman Robinson recapped the June 30, 2021 Board of Selectmen's meeting where the board discussed adopting a policy to stop the issuance of land use permits in the South Peak Resort Development. Several people voiced opposition at that meeting, and the board had agreed to consult with legal counsel and continue the discussion to today's meeting. As a result, Robinson explained that the Board had revised their policy regarding the issuance of land use permits in South Peak, and was prepared to make the following Motion. Robinson further explained that after the Motion was seconded, he was prepared to briefly explain his reasoning for supporting his motion; then the Board would discuss it, invite public comment, and then a final vote would be taken:

MOTION: "As of July 6, 2021, the Town will not be issuing Land Use Permits in South Peak until further notice for all lots in the High-Pressure Zone and all lots currently owned by FC-Loon or CRVI."

Motion: OJ Robinson

Second: Tamra Ham

Robinson stated the following explanation for his motion as follows:

"The Town has filed a lawsuit which is pending in Grafton County Superior Court against CRVI South Peak; FC-Loon, and the South Peak Resort Homeowners Association, alleging an ongoing abuse and misuse of the Town's municipal water supply, and refusal to (1) construct a water storage tank, (2) operate the high-pressure zone according to its engineered design configuration, and (3) connect certain properties to the appropriate booster pump station. As a result, the Town alleged in the lawsuit a number of potentially serious consequences, including inadequate municipal water supply and pressure to certain areas of the Town; inadequate water reserve levels in the Town's water storage tanks, and the potential for not-potable water reaching portions of the Town. The Town has asked the court to order the defendants to remedy this situation, and in the meantime, the Town has asked the court to prohibit the sale or development of additional lots in South Peak.

While this case is working its way through the Court system, for the reasons just stated, I think that this decision at the municipal

level is necessary to protect the Town of Lincoln. If the Court makes a decision which requires us to amend this decision, we will of course do so. Likewise, if the defendants make the required changes and improvements to the South Peak water system, then we will gladly revisit this decision and amend it appropriately.”

Chairman Robinson opened the meeting up for public comment and asked that those participants who spoke at the June 30th meeting not repeat their earlier comments, and allow for additional comments from new participants:

Selectman Daly explained that this motion proposes that anyone who currently owns a lot (with/without a current land use permit filed with the town) can proceed with their construction project(s), however, from this day (July 6, 2021) going forward, CRVI and FC-Loon cannot obtain *any* land use permits. Daly acknowledged that there are innocent bystanders (homeowners, contractors, realtors, etc.) that got caught in the middle of this situation, and explained that the town is seeking to enforce through the legal court system an obligation that was originally agreed upon by the Developer, Centex Destination Properties (2005/2006) to construct a water tank. Daly further commented that some of the remarks and emails that he received from various stakeholders cited that the Town is liable for its water system, however, Daly explained that South Peak is a PORS (Privately Operated Redistribution System) and therefore, the homeowners are responsible, and the town has the right to see that the developer installs the new water tank as originally agreed upon. Daly reminded everyone that they would not be in this situation today, if the developer had fulfilled their obligations years ago.

Chairman Robinson agreed with Selectman Daly and remarked that the Town is looking to allow the individual lot/home owners to proceed, however, (1) not in the high-pressure zone, and (2) not if the property is owned by the companies that are causing/contributing to this problem.

Paul Rogers asked, (1) how did the water issues up at the Landing get resolved and manage to obtain land use permits to build up there, and, are they a party to this lawsuit? (2) is it possible that a mediator could be brought in to assist with resolving this matter? (3) why is the South Peak Homeowners Association a party to this lawsuit when they have no say, or no votes?

Robinson responded to Mr. Rogers first question, stating that the Landing worked hand-in-hand with the Town; Fire Chief, State Fire Marshal’s Office, DES, and the Planning Board to obtain results that were satisfactory to all parties involved. Robinson remarked that as far as mediation is concerned, the Town would be happy to sit down with reasonable parties that are informed of the facts, and agreeable to reaching a resolution without any further problems (there are very clear issues and history) and this has not happened. Robinson clarified that the Town has attempted in good faith to make offers of a resolution, however, one side cannot mediate alone. In response to Mr. Rogers last question, Robinson explained that the Town is not certain who controls the booster pump station; the property it sits on, the building its housed in, or the pipes underground and PRV valves, and there have been actions taken that signify there are multiple people that appear to making decisions about these various assets. Robinson further explained that the Town did not want to go through the court process and have a decision that states the Homeowner’s Association must do something, if they are not part of the court proceedings.

Attorney Derek Lick (Sulloway & Hollis) commented that he was retained by one of the South Peak property owners (Mark Bogosian) as well as several of his neighbors who are in a similar situation, and feels that the motion the Board offered today appears to satisfy his client’s concerns and thanked the Board. Attorney Lick questioned if at some point the Board could identify which lots that the town considers to be in the *high-pressure zone* (tax map & lot numbers) so that he can identify which lots are restricted/not restricted. Selectman Ham responded that there is a document that details this information,

and it will be attached to these meeting minutes upon approval. Robinson clarified that the high-pressure zone is not a *random* destination, but rather the booster pump station that feeds up to the end of Hemlock Drive, then goes downhill one side of Crooked Mountain Road to where the PRV (pressure reducing valve) and underground vault are located, then down to the other side beyond the Pemi Base Camp toward Riverside Condos to another PRV and underground vault. Robinson explained that it is these vaults and valves that define the high-pressure zone, and these valves are meant to be separating those points (town pressure system from the pressure that is boosted by the booster pump station that feeds the “T” area in the higher elevations. Robinson noted that this is commonly not configured the way it was designed and approved, which essentially is the crux of the whole problem.

Mark Ehrman asked the Board if all of today’s speakers and participants who asked questions could be fully identified in the meeting minutes (including contact information). Selectman Ham responded that beyond identifying meeting participants by name, the board does not require their contact information for the meeting minutes.

Paul Beaudin asked if he could find out the number of lots that are currently not built, but will be allowed to build on or after today’s motion. Robinson responded that he does not have a list of lots that are vacant or sold in that development. Selectman Daly responded that at the present time there are five (5) lots that have land use applications submitted to the Planning Department. Selectman Ham responded that after the Board takes a vote today (and if it passes) they will then be able to take a snapshot of the situation and they will have this information. There was a brief discussion about the high-pressure zone and criteria to build.

Tony Vorlicek (49 Crooked Mountain Road) asked if anyone has put a range on estimated costs for remediating the problem(s) at South Peak, and making it comply with what Centex had originally agreed to do. Chairman Robinson responded that he thinks that the Homeowners Association and the two developments would be the ones to answer this question.

Paul Beaudin asked if the concept of the basis of design and how it fits in with the site plan approval come into consideration with this proposed motion at all, or is it strictly relative to the high-pressure zone and elevation? Robinson responded that the Board is making their decision based on the current configuration of the high-pressure zone, and what they need to do to get this resolved along with the other inadequacies of the terms of the approval. Paul questioned if this is an administrative decision that can be appealed, or is this a legal action? Robinson questioned if Paul was alluding to this being under the Planning Board’s purview, and explained that the Board of Selectmen have discussed this with the town’s attorneys, and they are proceeding with what they feel is the best course of legal action.

Attorney Nathan Fennessy (represents FC-Loon, South Peak Homeowners Association & CRVI) thanked the board for their proposed action with respect to the individual homeowners, and explained that they believe that they should not be impacted by this dispute between the town and his clients. Fennessy proposed that the board modify their motion and take FC-Loon out, and asked if they can provide sufficient documentation to the Board (and town counsel) showing that FC-Loon and the Homeowners Association should not be part of this litigation, would they then consider modifying today’s motion in the future to reflect the same, so that it is just CRVI? Chairman Robinson thanked Attorney Fennessy for his comments.

David Yager (South Peak Resort Homeowners Association) asked for clarification, and questioned if the pump station adds the two (2) PRV valves to the two (2) water vaults, and upgrades the pump station to be able to support the official use (includes Pemi Base Camp) would all of the high pressure lots be freed up for land use permits? Robinson responded that this alleviates one (1) problem of the conditions of

approval with South Peak, however, it does not alleviate the trigger that will then require the building of a water tank at South Peak. Yager responded that it was stated in previous meeting minutes that the issue is the high-pressure zone, therefore, if the problem is resolved with the high-pressure zone with an increased capacity in the booster pump station, that should take care of the high-pressure zone land use permit issues. Yager clarified for the record that this is not just about the high-pressure zone. Robinson responded that this is correct. A discussion ensued on the high-pressure zone and need for a water storage tank. Selectman Daly read from a Hoyle Tanner report dated January 27, 2020 as follows: *“Both the Town and NH DES approved the South Peak Development with the condition and understanding that the new water storage tank would be built after the high-pressure zone is expanded to include more than 27-units.”*

Nick Dufour (South Peak Homeowner) asked what the benefit was in naming South Peak in this lawsuit, and what was the town looking to get from the South Peak Homeowners Association? Chairman Robinson responded that he has addressed this question the best that he can. Mr. Dufour asked if there is a process that they can go through that will remove them from this equation (i.e., petition, letters). Selectman Ham responded that he should consult with his attorney for counsel on this matter.

Peter Wason (Lincoln resident) questioned the Board, and asked with all of the technological changes and innovations over the years since the original approval in 2006, the Board’s position is that regardless of the technology, unless it’s a water tank, they will not approve moving forward? Chairman Robinson agreed that there is new technologies and designs that had been presented to the Planning Board, and a third-party engineering firm (Hoyle Tanner) who reviewed this and noted that there were deficiencies in it related to fire suppression and further build-out of the South Peak property, and these issues were *not* adequately addressed.

An audience member asked if the Town would be benefiting from a new water tank, or would this be beneficial to South Peak only? Robinson responded that the original developer (CENTEX) had numerous conversations with the town stating that Centex was dedicated to building the tank, and the town would have the option to work with them and increase the size of the tank, with the town paying for the increased size. Robinson explained that he was not certain if CRVI would follow-through with the same spirit of cooperation, and if they choose not to, it would then only serve South Peak. The question was asked if the South Peak water tank would free up water usage from the Forest Ridge tank? Robinson responded that this would not free up water in the Forest Ridge tank, and explained that by putting Crooked Mountain Road back on to the high-pressure zone that it was originally designed for, would subsequently free up 600k gallons of water. David Yager commented that the Town had allowed Loon Mountain to tie into a line that theoretically put the 27-homes at 31-homes which stresses their pump station and PORS system which is one of the main reasons they had offered to increase the capacity of the pump station (which the town is saying they cannot do). Robinson responded that this is only one (1) aspect of the story, and part of the litigation that he was not going to get into. Although Robinson noted what Mr. Yager was stating isn’t wrong, it is absolutely incomplete.

Kirby McBride (51 Crooked Mountain Road a/k/a Lot 37) explained that his land use application has been submitted since January 2021, and asked if he will be affected by this motion now and be able to obtain permit approval? Chairman Robinson responded that his lot is in the high-pressure zone. Mr. McBride asked what has to happen in order for him to obtain his permit approval? Robinson responded that he should speak with his Homeowners Association and their attorney.

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Motion: OJ Robinson

Second: Tamra Ham

All in favor

Chairman Robinson thanked everyone for attending today’s meeting and sharing their comments and input, and explained that the Board of Selectmen occasionally have difficult decisions to make, and it is always helpful to hear alternative viewpoints and to be questioned so that the Selectmen are sure that they are doing the right thing, and in this case, he believes they are.

Selectman Ham commented that she received several emails and phone calls that were extremely understanding and civil about this situation, and she is very appreciative of this. Chairman Robinson agreed and thanked Ham for bringing up this important point.

This discussion ended and the board took a two-minute recess.

III. OLD/NEW BUSINESS

ARPA Funding (American Rescue Plan Act)

Town Manager Burbank informed the board that the Town of Lincoln should be receiving approximately \$180k in COVID relief funding, and asked the board if they wanted to accept the funds or decline them (some towns are declining the money). Burbank asked the board if they would like him to “accept” the funds, and then transfer the “designee” over to the new Town Manager when the time comes. The Board agreed that they want to accept the ARPA funding and use the funds towards water/sewer infrastructure, and Town Manager Burbank can transfer the designee over to the new Town Manager at the appropriate time.

Northern Borders Regional Grant

Town Manager Burbank informed the Board that the grant expires this coming September, and he has asked Weston & Sampson to request a 2-year grant continuance.

IV. ADJOURNMENT

With no further business to attend to, the Board made the following motion:


MOTION: “To adjourn.”

Motion: OJ Robinson

Second: Tamra Ham

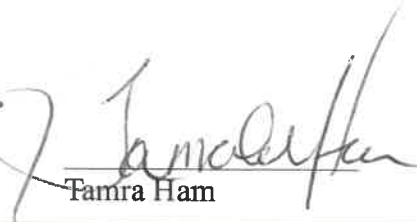
All in favor.

The meeting adjourned at 4:57 p.m.


Respectfully Submitted,
Jane Leslie

Approval Date: July 12, 2021


Chairman O.J. Robinson


Tamra Ham


Jack Daly

July 6, 2021
Board of Selectmen's Meeting
Please PRINT Legibly

Roger Harrington
(Print Name)
STEVE LOYND

David Frahm

Matt Frahm

Pete Cherico

Fred Storkoff III

Michael G. Muro

Bob Mulhall

Dennis Gaudet

Bill Power

Nick Dufour

Paul Rogers/Maureen Parker

LUKE DEWOLFE

Derek Locke Subray & Kiki

Nathan Fenneguy

Peter Wilson

Roger Harrington
(Sign Name)

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David Frahm

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Pete Cherico

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B. Power

N. Dufour

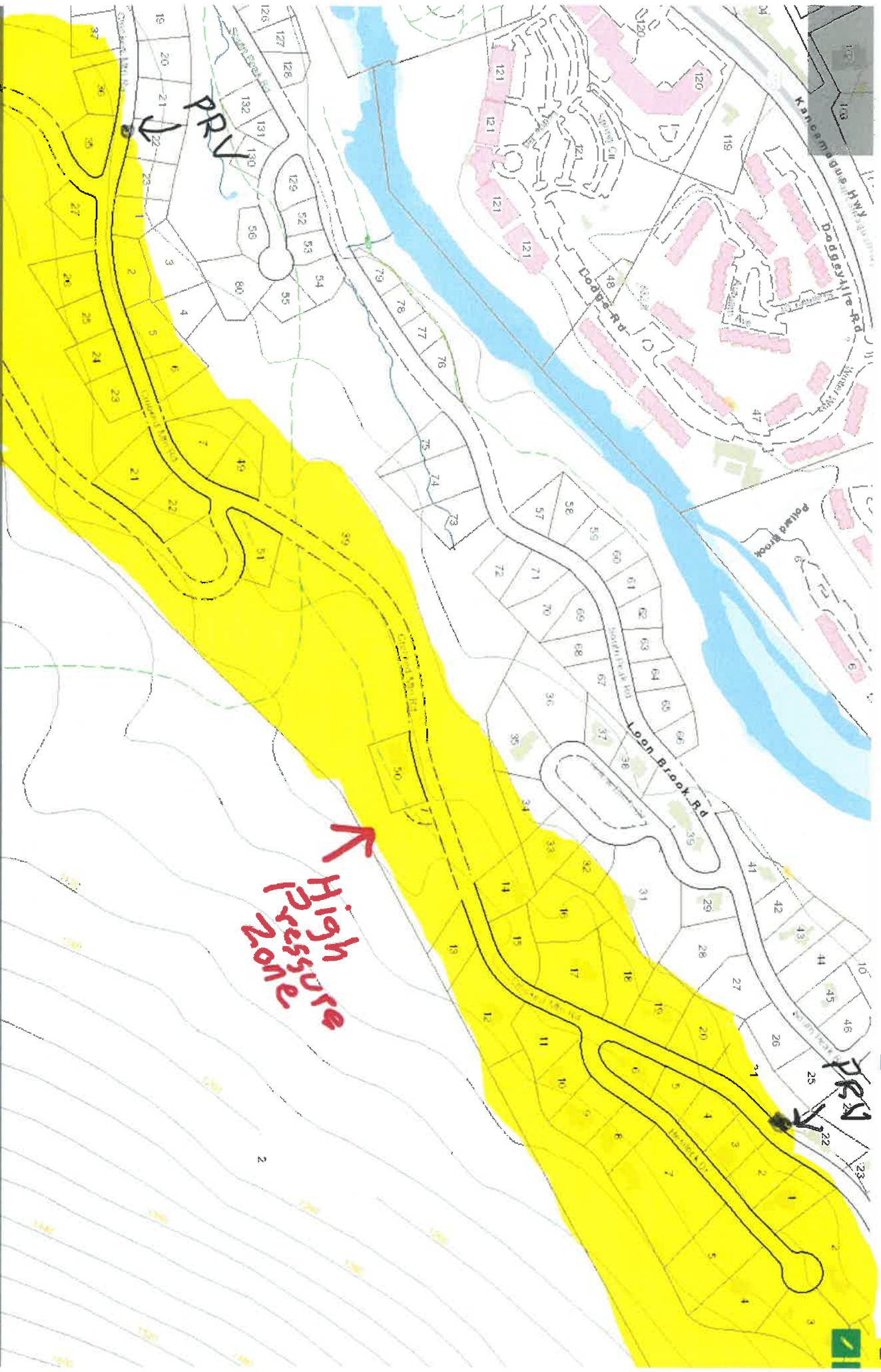
maureen parker

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High Pressure Zone

PRV

PRV

