

## MEETING MINUTES

JUNE 30, 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, Planner Carole Bont, Lisa Peluso, Planning Assistant (*via Zoom*) and Administrative Assistant, Jane Leslie

**Public Present via Zoom:** Paul Beaudin, Laura MacLean, Todd MacLean, Liam Cargill, Mary Conn, David Yager, and Deana Burke

**Public Present:** Bill Conn, Taylor Beaudin, Dave Beaudin, Andrew Goddard, Nathan Hennessy, CRVI Attorney

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## I. CALL TO ORDER

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

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## II. CEASING THE ISSUANCE OF ALL SOUTH PEAK BUILDING PERMITS

Chairman Robinson explained that the Board of Selectmen had a non-meeting this past Monday, June 28, 2021 with Town Counsel to discuss a lawsuit filed by the Town of Lincoln against CRVI South Peak; FC-Loon, and the South Peak Resort Association. As a result of this meeting, the Board of Selectmen issued the following memorandum dated June 29, 2021 (*see attached*):

*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 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 non-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. As a result, the Town will not be issuing Land Use Permits in South Peak until further notice. –Town of Lincoln Board of Selectmen*

Chairman Robinson provided a brief historical overview of the water situation at South Peak, and explained that South Peak Resort Development had received permission to build according to their approved Master Plan (2008), and the basis for water design at that time had a booster pump station feeding what has become known as the *high-pressure zone* which includes the area where the vault is located on Crooked Mountain Road; uphill, all of Hemlock Drive, and continuing on Crooked Mountain Road beyond Pemi Base Camp and down towards the second vault (almost near the Riverside Condos). Robinson went on to explain that the Town had been unaware for many years that this was the design that the engineers believed was there, and they used this design when they were analyzing the town's water distribution system for another water-related matter. When the engineers were evaluating the issue, they determined that the high-pressure zone was *not* feeding a section of Crooked Mountain Road from the first vault up past Pemi Base Camp to the second vault. As a result, the Town cannot use the Forest Ridge water tank because it ties up approximately 600k gallons of water in that tank that subsequently becomes unusable when the water level drops down in the tank and water pressure at certain areas of town does not

meet the State minimum. Robinson explained that the reason for this is because the high-pressure zone that is supposed to be on the booster pump is at an elevation that does not allow the tank to drop down in order to feed that higher elevation.

Robinson further explained that once the Town was made aware of this issue, a great deal of time and money was expended investigating this situation and speaking with town engineers and verifying that this system is *not* supposed to be functioning the way it is. Robinson noted that the Town is fully convinced that the system as it is now (causing the restrictions on using the Forest Ridge Tank) is not installed according to the way it was approved. Therefore, the Town had been in discussion with CRVI and their attorneys, and FC-LOON and the Homeowners Association, and had reached a tentative agreement where they were going to upsize the booster pump station and return it to the way it was *supposed* to be until they ran into some problems, primarily the cost far exceeding what they had originally planned on. Robinson continued to explain that the parties involved also had no intention on building a water tank (which would resolve these problems) and the original design of the booster pump station was only meant to be “temporary,” and used until the South Peak water tank was built (once the tank was built, the booster pump station would have been feeding the tank, and not the individual homes). Robinson summed up the discussion by saying that the owners have stated that they have *no intention* on building a water tank, and the Town is filing suit to ensure that this tank is built, and to get the high-pressure zone back to the way it was “designed and approved.”

Selectman Daly commented that when he reviewed the original documents, he noted that the original declarant (Centex) had signed a contract and assumed the obligation to build a water tank, and these obligations fell on to the subsequent declarants, and CRVI now has that obligation. Daly explained that CRVI has given no indication that they are willing to do this, however, they owe it to the homeowners and contractors who are all going to be hurt and affected by this, which is why the Town is pursuing this matter through the courts.

Chairman Robinson made the following motion:

**MOTION: “To open the Public Hearing up for public comment”**

**Motion: OJ Robinson**

**Second: Jack Daly**

**All in favor.**

Bill Conn commented that he had heard Town Manager Burbank had a meeting with the stakeholders from South Peak and everything had been resolved. Burbank responded that they did have an agreement, however, the parties had backed out. Selectman Daly added that the Town had received a matching grant (\$1M) that could be used towards payment for a water storage tank which costs approximately \$3.1M to build, and would have saved the developer from assuming the full \$3.1M cost associated with building a new water tank, however, the Developer was not interested. There was a brief discussion on the location for the proposed water tank.

Paul Beaudin questioned if the town was taking back future and current approvals for development (anything being built now would have to stop)? Robinson responded that as proposed, the Town will no longer be issuing *any* land use permits this day going forward. Beaudin also questioned if the Board would be rescinding the South Peak Development approval until such time that the Board is satisfied, and asked if it would be under the purview of the Planning Board to revoke the original site plan based on the Developer *not* meeting their conditions of approval? Robinson agreed with the latter statement, and noted that the site plan is a Planning Board issue, and the Board of Selectmen are not considering this, but rather just looking at the land use permits.

David Beaudin asked the board if they have considered the impact from the loss of tax revenue from the lots that are already in the queue, and if this has any weight in their decision? Robinson responded that the Board is aware that this will obviously affect the tax base.

Robinson went on to explain that the Town's position on resolving this issue from day one has been to find a reasonable; fair, and mutually-beneficial solution to this problem, and he has spearheaded the effort to come up with a solution that would save CRVI close to one-million dollars. Robinson further explained that the Town has always been forthright and fair, yet accused of extorting those entities and trying to use their money to benefit other business. Robinson addressed Attorney Fennessy and commented that his reaction and inflammatory language has been incredibly bias and unfair, and the Town realizes that they are not dealing with reasonable entities. Robinson explained that historically (during Robinson's tenure) Lincoln has been progressive; fair, pro-development, and always willing to work with developers and homeowners' associations, and always with a level of fairness. Robinson went on to explain that as much as he wants to resolve this issue, he doesn't want to do it in any way that is unfair to the taxpayers; homeowners, innocent bystanders or the Town, and he would like to have further consultation with Attorney Malia about this, as well as looking further into the fire suppression aspect and not vote on it tonight.

The board agreed to continue this discussion on Tuesday, July 6th at 4pm.

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### **III. NON-PUBLIC Session Pursuant to RSA 91-A:3:(III) (e)**

*There was no Non-Public Session.*

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### **IV. ADJOURNMENT**

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

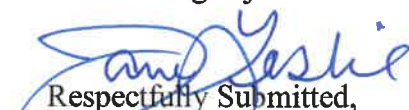
**MOTION: "To adjourn."**

**Motion: Tamra Ham**

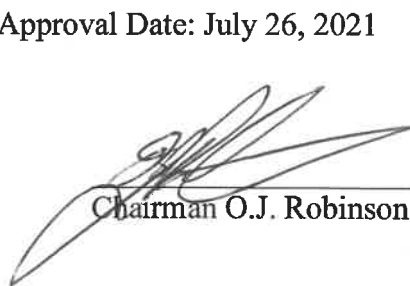
**Second: Jack Daly**

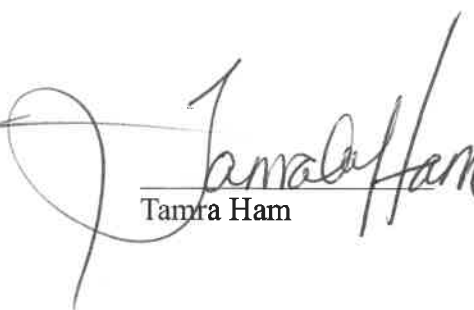
**All in favor.**

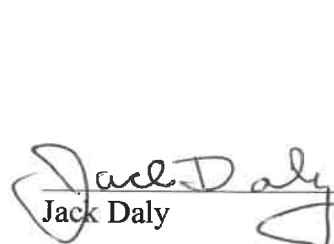
The meeting adjourned at 5:17 p.m.

  
Respectfully Submitted,  
Jane Leslie

Approval Date: July 26, 2021

  
Chairman O.J. Robinson

  
Tamra Ham

  
Jack Daly

Andrew Goddard (179 South Peak Road) read a prepared letter to the Board (*see attached*).

Todd McLane introduced himself and explained that he recently purchased Lot 032 on South Peak Road and noted that he shares many of Mr. Goddard's concerns, and did not think he would have any issues with his lot because it is below the 950' elevation. Mr. McLane further explained that he has paid meaningful expenses working with a local builder developing plans, and although he agrees that the Town has a valid concern, he is hoping that the Board understands that there are people such as himself who have spent fairly material dollars to own a piece property that appears to be destined to neither be built on or sold for multiple years, and it is his hope that their rights and interest will be taken into account.

Nathan Fennessy, Attorney representing CRVI commented that he feels for all of the individual lot owners, as they should not be part of this situation. Fennessy went on to explain that all of the lots that were purchased were in the low-pressure zone and therefore never intended to be serviced by the booster pump station (and never will be) and there is no reason these property owners should be a part of this situation. Fennessy went on to explain that the issue that the Town has is between his client (CRVI) and the Town, and FC-LOON and the Homeowners Association should not be involved. Fennessy further commented that he feels his client has met all of the Town's conditions, and has not met the trigger threshold of 27 developed lots at this time. Selectman Daly asked Attorney Fennessy in his legal opinion if CRVI owes the Town of Lincoln a water tank up at South Peak? Attorney Fennessy responded that he is not prepared to give a legal opinion.

Bill Conn asked the Board if all of the property owners affected by this situation were notified of today's meeting? Robinson responded that the Board only decided yesterday to hold today's meeting, which is their first discussion about this situation. Conn asked if the Board was prepared to vote on something without the property owners having any say in this matter? Conn feels that the Board should postpone this meeting and schedule a new date, and notify the property owners affected by the upcoming motion so that they have a chance to come to the meeting and defend themselves. Chairman Robinson responded that the Homeowners Association was notified of today's meeting.

Paul Beaudin commented that had the Developer stuck to the original agreement, no one would be sitting here right now, however, it appears that everyone is going after the Town, and he feels the Board is taking the correct course of action.

Selectman Ham commented that she is comfortable voting to approve this motion tonight, knowing that this decision is based on advice from Town Counsel and extensive discussions. Selectman Daly agreed with Ham and feels a letter should be sent out to each of the homeowners to solicit their comments for the Board, however, his mind is made up, but he is willing to take into consideration the feedback that they receive.

Town Manager Burbank commented that FC-LOON is the major holder of the lots in the low-pressure zone, and there are five (5) current land use applications filed with the town at this time. Burbank went on to explain that the town is also suing the Homeowners Association (HOA), and unbeknownst to the Town, the HOA upon being served with the suit has stopped any further development (based on this lawsuit). Burbank noted that there are a lot of moving parts to this, and the town hasn't done anything that the HOA has not already done.

David Yager of the Homeowners Association responded to Burbank's comments stating that they have *not* stopped anything, and continue to move the homeowners through the ARB process as today.

June 30, 2021

Board of Selectmen's Meeting

Please **PRINT** Legibly

(Represents CRVI)

Nathan Fennessy

(Print Name)

Bill Pounce

Carole Bont, Planner

Bill Conn

TAYLOR BEAUDIN

Andrew Goddard

David Beaudin

N

B.

(Sign Name)

Carole Bont

Bill Conn

Taylor Beaudin

Andrew Goddard

DAVID BEAUDIN

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**June 30, 2021**

**Board of Selectmen's Meeting**

**Please PRINT Legibly**

On line

Jeanne Beaudin / Paul Beaudin

(Print Name)

(Sign Name)

Laura MacLean

Liam Cargill

Lisa Peluso

Mary Conn

Man (upper half)

David Yager

[w/Laura MacLane]

Todd McLane (owns Lot 32)

"Danny" (Deana Burke)

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



Good afternoon Select Board,

My name is Andrew Goddard and I have a residence at 179 South Peak Road here in Lincoln. I am also the owner of Lots 39.2 and 39.3 South Peak Road, which is located within phase two of the South Peak development. I am here tonight to make some requests and I hope the town can find a reasonable, common sense path forward that does not needlessly entangle dozens of individual land owners all of whom bear no responsibility for the town's infrastructure development.

Along with being a homeowner within the town of Lincoln, my company, Copley Properties, is a custom home builder currently working with multiple lot owners within the South Peak Resort. Along with myself, these lot owners will be negatively affected if the Board votes to institute a blanket freeze on any and all land use permits within the South Peak development.

Over the years I have received much information regarding the town's water flow issues and concerns from the town planner, Carole Bont; the town manger, Butch Burbank; the fire chief, Ron Beard; the South Peak HOA; CRVI; and and FC Loon. Prior to purchasing Lots 39.2 and 39.3 South Peak Road, I had multiple conversations with multiple town officials and all emphatically ensured the lower lots on South Peak Road, which are located in the low water pressure area, had sufficient water and therefore permits would be provided. The elevation of 950' was described to me as the elevation cut off where permits currently would not be provided due to water flow concerns. Furthermore, it is my understanding that mere months ago the Town of Lincoln provided a letter to the State of New Hampshire's Attorney General's Office stating that there was in fact sufficient municipal water and sewer on the low water pressure lots within South Peak Phase Two to support new residential residences. In reliance on that letter, the Attorney General's Office approved the subdivision based upon that representation by the Town. I ask what has changed between now and then when the original statement to the Attorney General's Office was made?

My request is simple. Until the town's concerns regarding the fire safety infrastructure obligations of FC Loon and/or CRVI are alleviated, the Town will not issue land use permits for any parcels titled to FC Loon and CRVI as of today, June 30<sup>th</sup>, 2021. On the other hand, the Town will issue land use permits to the individual lot owners who have no such responsibilities. Practically speaking, the litigation the Town has filed and the subsequent construction of the water tower will take several years. To needlessly entangle innocent lot owners in this dispute is completely unfair and this is truly the only equitable solution.

While I strongly feel the right decision of this Board is to fully release the individual parcel owners from the larger battle between the Town, CVRI, and FC Loon, there may nevertheless be some reasonable modifications to current lot owner applications to easily and immediately address the Town's safety concerns with these new proposed residences. Specifically, I have had a land use permit application awaiting approval by the Town of Lincoln for Lot 39.3 South Peak Road dating back to February 2021, which I am here to state I am willing to install a 13D fire suppression system in the residence to voluntarily address the current fire safety concerns of this Board. The addition of a voluntary 13D fire suppression system is to my understanding a new requirement implemented by the Town at The Landings to address similar fire safety concerns. As discussed yesterday, June 29<sup>th</sup>, 2021, with Fire Chief Ron Beard a voluntary 13D fire suppression system installed within the low water pressure area of South Peak Road would immediately alleviate any fire safety concerns. This would allow lot owners, at significant personal expense, the opportunity to at least move forward with



construction that many have long been looking forward to and actively pursuing for some time. Again, the alternative is innocent individual lot owners owning, and paying taxes on, lots they can not enjoy for several years at the earliest. Therefore, if the general moratorium on South Peak land use permits is truly about fire safety and not about the individual lot owners putting pressure on CRVI & FC Loon to install the desired water tower, the Town will at least allow the individual lot owners to install costly fire suppression systems and extract themselves from this situation.

While a water tower is possibly needed and desired when South Peak is fully developed, it is not necessarily required for all parcels in the low pressure area if additional life safety systems are implemented. As a land developer and home builder, I frequently install 30,000 gallon fire cisterns within our projects as required for fire safety. While it seems the legal battle between the Town of Lincoln, CRVI, and FC Loon could be a long dragged out fight over a \$3,000,000 - \$4,000,000 water tower I question if the installation of one or two fire cisterns have been considered as a more immediate remedy for life safety as each cistern is just \$80,000 - \$100,000 each? The addition of fire cisterns could also possible be a path forward to address the current development level of South Peak Resort today, though the fire tower a matter as any additional development is considered and/or approved.

I thank the board for their time today, though I ask the Board to find a path forward that does not entangle all fellow town taxpayers within South Peak into a battle where everyone is suing everyone. As I mentioned earlier a possible immediate solution for South Peak low water pressure parcel owners could be a voluntary 13D fire suppression system, but the common-sense and equitable answer is allowing the individual lot owners the opportunity to continue with their land use permits.

Thank you

Andrew Goddard





# *Town of Lincoln*

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Lincoln, New Hampshire 03251-0025



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DATE: June 29, 2021

TO: SOUTH PEAK PROPERTY OWNERS AND/OR INTERESTED PARTIES

FROM: TOWN OF LINCOLN, BOARD OF SELECTMEN

RE: SOUTH PEAK DEVELOPMENT WATER SYSTEM

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 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 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. As a result, the Town will not be issuing Land Use Permits in South Peak until further notice.

