

APPROVED

PLANNING BOARD
PLANNING BOARD MEETING
WEDNESDAY, August 23, 2023, 2023 – 6:00 PM
***Lincoln Town Hall, 148 Main Street, Lincoln NH**

*Hybrid meeting available both in person & via Zoom Meeting Platform to allow for town wide participation. A quorum of Planning Board members must be physically present at the meeting. Although there is space in the large conference room for 8-12 guests in addition to the Board members, the public is welcome to participate remotely using ZOOM. Planning Board Meetings can be attended in-person at the Town Hall Building. Recordings of all Planning Board meetings can be found at www.youtube.com (Lincoln NH Planning Board Meeting 08 23 2023). Zoom access is for your convenience; use at your own risk. If any technical difficulties or if ZOOM should go down, the meeting will NOT be rescheduled.

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(See also town website www.lincolnnh.org for same link, meeting ID and passcode.)

I. CALL TO ORDER by Chairman James Spanos

Planning Board Members Present: Chair James Spanos, Vice-Chair Joseph Chenard, Selectmen's Representative OJ Robinson, Member Paul Beaudin, Alternate Danielle Black (seated at this meeting)

Planning Board Member Excused: Member Stephen Noseworthy, Member Mark Ehrman

Staff Present: Planner Carole Bont

Guests Present:

- **Susan L. Berube**, nonresident, (ABUTTER) of 26 Laurel Drive, Bedford, NH 03110, owner as Trustee of Susan L. Berube Revocable Trust that owns 67 Winter Way #4 (Map 121, Lot 047000-0B-00004).
- **Susanne (Susan) A. Chenard**, resident of 11 Liberty Road, Lincoln NH 03251 (Map 107, Lot 061) and Realtor for Loon Reservation Service, 264 Main Street, Suite 12, PO Box 785, Lincoln, NH 03251-0785, and owner of 19 Maple Street (Map 118, Lot 069). Alternate member of the Zoning Board of Adjustment.
- **Brian Norton, nonresident (ABUTTER)**
 - President & General Manager at Loon Mountain Recreation Corporation d/b/a Loon Mountain Resort
 - Loon Mountain Recreation Corporation d/b/a Loon Mountain Resort, 60 Loon Mountain Road, Lincoln, NH 03251. Owns the following:
 - Kancamagus Highway (Map 001, Lot 002000-BG)

- Connector Road (Map 110, Lot 007000-BG)
 - 143 Pollard Road (Map 114, Lot 005)
 - 100 Pollard Road (Map 117, Lot 051)
 - 75 Crooked Mountain Road [Pemi Base Camp Building Only] (Map 121, Lot 050-BG)
 - South Peak Road (Map 122, Lot 007)
 - 60 Loon Mountain Road (Map 126, Lot 001)
 - Black Mountain Road #LO (Map 126, Lot 002)
 - 60 Loon Mountain Road (Map 126 Lot 020)
 - 52A Loon Mountain Road (Map 126, Lot 020000-BG)
 - 60 Loon Mountain Road – Deli (Map 126, Lot 018000-MC-0000A)
 - 60 Loon Mountain Road – Java J (Map 126, Lot 018000-MC-0000B)
 - 60 Loon Mountain Road – Food/L (Map 126, Lot 018000-MC-0000C)
 - L/O Route 112 (Map 127, Lot 306)
 - US Route 112 (16 Acres) (Map 127, Lot 307)
 - Main Street #Gazebo (Map 127, Lot 308)
- “**IPhone1**” – is an unidentified participant #1 who named their computer handle, “IPhone1” (via Zoom).
 - “**IPhone10**” – is an unidentified participant #2 who named their computer handle, “IPhone10” (via Zoom).

II. CONSIDERATION of meeting minutes from:

- **August 9, 2023 (Wednesday)**
 - Chairman James Spanos, Vice Chairman Joe Chenard, Selectmen’s Representative OJ Robinson, Member Stephen Noseworthy, Member Paul Beaudin

Motion to approve with minutes with changes by Selectmen’s Representative O.J. Robinson

Second Vice Chairman Chenard

Four (4) in favor and one (1) abstention by Danielle Black as she was not present at the meeting.

III. 6:00 PM CONTINUING AND OTHER BUSINESS (Staff and Planning Board Member/Alternates).

Mark BOGOSIAN:

- A. South Peak Resort Revised Master Plan:** Planning Board Discussion of South Peak Resort Master Plan and whether to accept the proposed revisions to the South Peak Resort Master Plan.

Discussion

Chairman Spanos reads an email sent by Scott P. Miccile, P.E. (MA, NH), Civil Engineering & Land Development Director Longfellow Design Build, Inc. in which he says the following:

“Hi Carole,
Hope all is well. This email is to confirm that we will not be in attendance at tonight’s Planning Board meeting. We would be happy to attend a future meeting to continue the discussion on the Master Plan. But, since the initial meeting on the Master Plan was a joint meeting with the BOS, we request that any subsequent meetings also have the BOS in attendance as well as Town Counsel. Let me know some potential dates in September for this joint meeting, and I will confirm our team’s availability. Thanks.”

Member Beaudin comments that the Board of Selectmen (BOS) has nothing to do with the Master Plan and that if Applicant wants a meeting with the BOS, they will be waiting a long time. He adds that in the Land Use Plan Ordinance (LUPO) the Master Plan is directed and guided by the Planning Board. He notes that the BOS has the authority and responsibility to do the developer agreement, which has already been done. Member Beaudin discusses a meeting that took place between the Technical Review Committee, Mr. Korber, and Town Manager Park but it did not include the Planning Board. He thinks before the Planning Board moves any further, the Planning Board should have a meeting with the Town Attorney to get answers to legal questions they have. Chairman Spanos agrees with Member Beaudin and comments they should be able to consult with the Town Attorney, as a Board.

Member Beaudin suggests Planning Board does not need to meet regarding the amended Master Plan and the Applicant can follow the 2006 Master Plan. He would like the Planning Board to meet with the Town Attorney and not get second hand information from members of the Technical Review Committee or the Town Manager or someone else.

The Planning Board discusses what would be the most productive way to move forward.

Selectmen’s Representative O.J. Robinson mentions that he is confused because Member Beaudin has been very vocal about wanting the Applicant to create an updated Master Plan, however, Member Beaudin has just now suggested that the Applicant follow the old 2006 Master Plan. He adds that he feels Town Attorney Jason Dennis should be involved because during the fifteen (15) years the old

approval and adoption of the 2006 Master Plan for South Peak was not done, as it typically should have been done.

Selectmen's Representative O.J. Robinson suggests the most productive plan for moving forward would be for the Planning Board to invite the BOS, even if they can't come, still have the Planning Board meeting about the South Peak Resort Master Plan and invite Town Attorney Jason Dennis to be present at that meeting. He adds that if members of the Planning Board have questions, then the Planning Board could go into Non-Public Session under NH RSA 91-A during or after the Planning Board meeting.

Member Beaudin would like to meet with Town Attorney Jason Dennis prior to having a public meeting to get answers to questions the Planning Board members may have; they would want answers to prior to meeting with Applicant's Attorney Derek Lick and Mark Bogosian and his South Peak, LLC team. Member Beaudin comments that he has questions about the conclusions and recommendations memo of August 21, 2023 from Town Attorney Jason Dennis and would like to ask Attorney Jason Dennis directly.

The Planning Board agrees that they should talk to the Town Attorney Jason Dennis prior to the hearing about South Peak's Master Plan. Chairman Spanos explains that the Planning Board has a Selectman's Representative on the Planning Board who can relay any concerns the BOS may have with the project.

The Planning Board discusses the details of how a joint meeting would need to be run with the BOS and conclude they would need to ask Town Attorney Jason Dennis about that first.

The Planning Board discusses the South Peak Resort Master Plan and the need for an updated Master Plan vs. keeping the old 2006 version of the Master Plan.

The Planning Board discusses how they want to meet with Town Attorney Jason Dennis. They decide to have a "non-meeting", at 5:00 PM prior to the next Planning Board meeting, with Town Attorney Jason Dennis (via Zoom), subject to his availability, on September 13, 2023 and then have the Master Plan hearing on September 27, 2023. Planner Bont will let Town Manager Park know that the Planning Board is planning to seek legal advice.

**Motion to meet on September 13, 2023 with Attorney Jason Dennis for a non-public session by Member Beaudin
Second by Vice Chairman Chenard
All in favor**

Motion to continue the South Peak revised Master Plan discussion to September 27, 2023 at 6:00PM by Member Beaudin
Second by Selectmen's Representative O.J. Robinson
All in favor

B. Discussion re: Potential Changes to Land Use Plan Ordinance (LUPO) including Concepts and Definitions of:

1. Short-Term Rentals (STR)

Discussion: Member Beaudin suggests the Planning Board not recommend any changes to the LUPO to address Short Term Rentals (STRs) and let the voters decide at Town Meeting if they want to make any changes to the LUPO when it comes to Short Term Rentals (STRs). The Planning Board discusses how to present the information and what information would be required to make it clear to the voters. The Planning Board discusses how STR have changed the character of the town and that people who are residents and some second home owners are upset about the change. The Planning Board continues to discuss STR.

Poll:

Chairman Spanos polls members of the Planning Board to determine if the regulation of Short-Term Rentals is something the Planning Board should discuss.

Two (2) vote "yes" (Robinson and Noseworthy); and
Three (3) vote "no" (Spanos, Chenard and Beaudin).

The Planning Board discusses the seven (7) zoning districts and what commercial and residential uses are allowed in different zoning districts.

Further Discussion:

Selectmen's Representative O.J. Robinson comments that it is shameful for the Planning Board to put the discussion of Short-Term Rentals (STRs) off for another year and deny the voters a chance to decide. The BOS and the Selectmen's staff receive many complaints about the Short-Term Rentals currently in operation.

Members of the Planning Board indicated their opinion that that it is too late to address the subject as "that train has already left the station." Furthermore, they felt that too many people had invested too much money in purchasing and renovating properties to convert them into short term rental properties. They did not want to interfere with those investors' ability to make money on those investments.

The Planning Board discusses potential ways to bring the topic of Short-Term Rentals before the voters.

Chairman Spanos suggests everyone read over the material and they can decide to discuss STR again, if the Planning Board wishes to do so.

2. Multi-Family Dwelling/Housing

Discussion: Chairman Spanos would like to take a look at this definition because of the newly created Business Use called “Restricted Multi-Family Residential Housing” which deals with Lot and Lot Coverage Requirements and Standards including a maximum percentage of lot coverage. He reads the definition of Multi-Family Dwelling from page 20 of the LUPO:

“A structure or combination of structures on a single parcel of land containing three (3) or more housing units whether for rental, condominium, ownership or other form of occupancy”.

Chairman Spanos notes that the definition suggests that three (3) separate houses can be put on a single lot. He proposes that the Planning Board describe it as a single building containing three (3) or more separate housing units. The Planning Board discusses the definition of Multi-Family. Planner Bont suggests changing the wording to read:

“A single structure on a single parcel of land containing three (3) or more housing units whether for rental, condominium, ownership or other form of occupancy.”

The Planning Board likes her suggestion. Selectmen’s Representative O.J. Robinson suggests changing, “housing unit” to “dwelling unit” because “housing unit” isn’t defined.

The Planning Board discusses definitions.

Conclusion:

Currently, on page 20 under the definitions of the LUPO reads:

28. Multi-Family Dwelling – A structure or combination of structures on a single parcel of land containing three or more housing units whether for rental, condominium ownership or other form of occupancy.

Revise the definition of Multi-Family Dwelling so it reads:

28. Multi-Family Housing: A single structure on a single parcel of land containing three (3) or more dwelling units whether for rental, condominium, ownership or other form of occupancy.

The Planning Board discusses the phrase “transient occupancy”

Currently, the LUPO refers to “transient persons whose primary residence is elsewhere” (Page 27) in ARTICLE V. GENERAL REGULATIONS, Section J “LIMIT ON BOARDING HOUSES”.

3. This section shall not apply to hotels, motels, motor inns, condominiums, or other facilities furnishing temporary or seasonal accommodations for a 6-month period or less, for transient persons whose primary residence is elsewhere.

Member Beaudin asks if the Planning Board should include “STR” in the definition of Multi-Family Housing”. The Planning Board decided that “transient occupancy” defines STR and since the Board is not addressing STR, the Board will leave it out.

The Planning Board makes an edit and crosses out the word “Portsmouth”.

3. **“Usable Land” and its relationship to floodplain, and other challenges to development.**

Discussion: Planner Bont explains that there is a definition of “Usable Land” in the LUPO already. Although their attorney Jason Dennis is satisfied with the definition itself, it would make sense to move the definition right up front in the definition section of the LUPO instead of hiding it in the “Special Exception” section of the LUPO. The Planning Board discusses where to put the definition as it is currently located in the Special Exceptions location.

The Planning Board discusses stormwater systems and that stormwater systems should **not** be considered “usable space” or be part of the calculation for “lot coverage”.

Planner Bont reads starting on page 35 of the LUPO and there is a discussion about lot coverage requirements.

Planner Bont explains the Planning Board could consider moving the definition from the Special Exceptions section to the Definitions section and they will discuss with Town Attorney Jason Dennis.

The Planning Board discusses “Adequate Usable Space” vs. “Usable Space”. Planner Bont will discuss the language that some of the Planning Boards members think should be used and referenced with Attorney Jason Dennis.

The Planning Board continues to review the LUPO and agree that the

numbering needs to be corrected on page 36.

The Planning Board discusses “Special Exceptions”.

4. Open Space or Green Space

Discussion: The Planning Board will discuss Open Space or Green Space at another meeting.

C. Discussion re: Whether approvals can be rescinded?

Discussion re: Chairman Spanos comments that approvals can be rescinded if developers are in violation of their approval. The Planning Board discusses scenarios from recent approvals and how the project needs to be in compliance before a permit is issued.

Chairman Spanos reminds the Planning Board that they will be discussing the South Peak Master Plan with the town’s attorney in a “nonmeeting” at the next meeting scheduled on September 13, 2023 and suggests they save their questions for Town Attorney Jason Dennis.

Planner Bont suggests giving the attorney questions before the meeting so he can prepare the answers. Chairman Spanos would like to give the Planning Board members time to come up with questions and suggests they submit their questions to Town Attorney Jason Dennis by September 6, 2023. The questions are to be forwarded to Planner Bont who, in turn, will forward everyone’s questions to Town Attorney Jason Dennis.

D. Discussion re: Other possible changes to Land Use Plan Ordinance (LUPO).

Currently, the Height Requirements Section of the LUPO reads as follows:

7. HEIGHT REQUIREMENTS

- a. In the Small Business Development, Village Residential and the General Residential Zone the following height restrictions shall apply:
 - i. The maximum structure height shall be twenty-five (25) feet measured from ground level to the primary eaves on the uphill side of the structure.
 - ii. There shall not be more than three (3) floors used as living space above or below ground level as measured through any vertical plane of the building.
- b. In the General Use, Village Center, Rural Residential and the Mountain Residential Zones the following height restrictions shall apply:
 - i. The maximum structure height shall be thirty-five (35) feet measured from the primary eaves on the uphill side of the structure.
 - ii. There shall be no more than four (4) floors used as living space above or below ground level as measured through any vertical plane of the building.

- c. Uninhabitable structures that are part of a tourist attraction are exempt from the preceding height requirements and are left up to the Planning Board as part of a site plan review. This includes ski lift towers and amusement rides and towers. The Planning Board may also increase the setback requirements for these higher structures on an individual basis as part of the site plan review process.

1. **“Living Space” and Four (4) Floors:**

The Planning Board discusses the definition of a “living space” as it relates to the number of floors (4) allowed. How does the word “living space” apply when the developer is proposing underground parking?

President and General Manager of Loon Mountain Recreation Corporation, Brian Norton, suggests that the Planning Board should be doing everything they can to incentivize onsite parking and smaller footprints by allowing underground parking structures as part of the LUPO. The Planning Board replies that a variance or a special exception would resolve any issues where underground parking takes up the number of floors (4) allowed.

2. **Structure Height:**

Selectmen’s Representative O.J. Robinson comments that in his opinion, a seven (7) story building with three (3) underground parking floors on the side of the Loon Mountain Ski Area is a whole lot different than that same structure set directly off of Main Street. He adds that this is not just about Loon Mountain Ski Area as there are other locations that have been pre-approved for X number of units that are spread out versus a developer using a smaller footprint that could include two or three (2-3) underground parking floors up against a hillside where it would not be seen.

Selectmen’s Representative O.J. Robinson asks the Planning Board if it makes sense to permit the developers to use less ground space and allow some flexibility in the ordinance without making the applicant go through having to prove a “hardship”.

The Planning Board discusses how this policy change would affect green space and the look of Main Street. Member Black suggests leaving the wording as it is and have the applicant apply for a variance. The Planning Board continues the discussion.

Selectmen’s Representative O.J. Robinson proposes that the Planning Board have more flexibility when it comes to permitting underground parking. The Planning Board discusses how to word the criteria as it relates to underground parking and the total height of the building.

Selectmen’s Representative O.J. Robinson is in favor of allowing underground parking in exchange for less lot coverage.

Member Beaudin adds that they need to be specific that the tradeoff is in Green Space versus additional underground parking.

Selectmen's Representative O.J. Robinson suggests that no more four (4) floors would be allowed if there were two (2) levels of underground parking, accompanied with fifteen percent (15%) less lot coverage.

The Planning Board discusses the various Zoning Districts which are currently the "short building" area where the maximum structure height shall be twenty-five feet (25') measured from ground level to the primary eaves on the uphill side of the structure and not more than three (3) floors used as living space above or below ground level as measured through any vertical plane of the building. The Planning Board discusses whether they should increase the building height requirements in those three (3) districts:

- a. Small Business Development (SBD);
- b. Village Residential (VR) District; and
- c. General Residential (GR) District.

The Planning Board discusses the language to be used and determines the following language is a starting point:

- There shall be no more than four (4) floors above or below ground level as measured to any vertical plane of the building, however, up to two (2) levels of underground parking in exchange for a fifteen percent (15%) reduction of lot coverage can be granted by the Planning Board.

The Planning Board will continue to discuss the list of items that Selectmen's Representative O.J. Robinson has put together at future meetings, as time permits. He suggests they discuss a separate zone for Route 3 and what that should entail.

IV. NEW BUSINESS: *None*

V. PUBLIC PARTICIPATION AND OTHER BUSINESS: *None*

VI. ADJOURNMENT

**Motion to adjourn by Vice Chairman Chenard
Second by Selectmen's Representative O.J. Robinson
All in favor**

Respectfully submitted,

Judy Sherriff
Recording Secretary

Date Approved: September 13, 2023


Chairman Spanos