

LINCOLN PLANNING BOARD
REGULAR MEETING MINUTES
TUESDAY, NOVEMBER 29, 2016 – 6:00PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH

APPROVED

Present: Chairman Jim Spanos, OJ Robinson - Selectmen's Representative, John Hettinger, Ron Beard (alternate & Fire Chief)

Members Excused: Paula Strickon, Callum Grant (alternate), Norman Belanger (alternate), Vice-Chairman R. Patrick Romprey

Members Absent: None

Staff Present: Town Manager and Town Planner Alfred "Butch" Burbank, Planning and Zoning Administrator Carole Bont, and Wendy Tanner (recorder)

Guests:

- **Stephen B. Tower, Surveyor** – Stephen B. Tower, surveyor, of Sabourn & Tower Surveying and Septic Design, PLLC, 70 Lost River Rd, North Woodstock, NH 03262, representing the applicants in both the first and second Lot Line Adjustment hearing.
- **John Chamberlain** – applicant and property owner, PO Box 1001, Lincoln, NH 03251 who own LO White Birch Lane (Map 114, Lot 050).
- **Robert Legare** – applicant and property owner, applying on behalf of co-owners Susan Smith of 107 Howe Hill Road, Benton, NH 03785, Raymond Legare, Robert Legare of 99 Howe Hill Road, Benton, NH 03785, and Robert Legare of PO Box 211, Lincoln, NH, who owns LO Mansion Hill Road (Map 114, Lot 050).
- **Greg Hren**
- **Frederic Nemeskal** – abutter and owner of unit owned by Frederic Nemeskal, Trustee, PO Box 52127, Boston, MA 02205-2127 at 5 Goldfinch Road #4, Unit 00028 (Map 114, Lot 026000-0D) Mansion Hill Condominium Association
- **Mike O'Connor** – abutter and owner with Debra E. O'Connor of 26 Mansion Hill Drive (Map 113, Lot 049) whose address is 26 Mansion Hill Drive, Lincoln, NH 03251-9801 and who also owns a condominium unit at 13 Duck Pond Way #7 Unit 00055 (Map 114, Lot 026000-0G)

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

*Paula Strickon, R. Patrick Romprey, Callum Grant and Norman Belanger were excused.
Ron Beard was seated.*

- II. CONSIDERATION** of meeting minutes from:

- November 9, 2016

Motion to approve the minutes of November 9, 2016 as amended.

Motion: John Hettinger **Second:** OJ Robinson **All in favor:** 4-0

- III. CONTINUING AND OTHER BUSINESS** (Staff and Planning Board Member/Alternates).

A. 6:00 P.M. Case # SUB MIN 2016-03 M107 L064 Louis A. & Mary E. Pieroni & Ralph S. Ciarleglio: Subdivision Application – Application for Lot Line Adjustment between 2 Lots.

Application for Lot Line Adjustment between 2 Lots – Applicants’ representative, Stephen B. Tower, surveyor, of Sabourn & Tower Surveying and Septic Design, PLLC representing both:

- (1) Louis A. & Mary E. Pieroni of 21 Mink Street, Providence Rhode Island 02908 who own 27 Liberty Road (Map 107, Lot 064) and;
- (2) Ralph S. Ciarleglio of 31 Liberty Road, Lincoln, NH 03251 who owns 31 Liberty Road (Map 107, lot 065).

An application for a subdivision/lot line adjustment will be submitted to the Planning Board. The property owners of Map 107, Lot 064 and Map 107, Lot 065 are proposing a minor subdivision (lot line adjustment) between them. The applicants propose to transfer the land along the northeast boundary of 27 Liberty Road (Map 107, Lot 064) to be added to 31 Liberty Road (Map 107, Lot 065). These two lots are in the General Use (GU) District. The applicant's surveyor is Sabourn & Tower Surveying and Septic Design, PLLC. No new lots are being created. No additional streets, utilities or public improvements will be required.

Upon a finding that the application meets the submission requirements of the Lincoln Subdivision Regulations, the Board will vote to accept the application as complete and a public hearing on the merits of the proposal will follow immediately. 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.

Presentation:

Surveyor Stephen Tower presented on behalf of the applicants for a lot line adjustment. Tower said that this is a simple boundary line adjustment. Tower described the two adjacent lots and the sliver of land between the two lots that will be transferred from one owner and tacked onto the adjacent other lot. At this time a small portion of the Ciarleglio's driveway is located on the Pieroni's land. The purpose of the lot line adjustment is to get Ciarleglio's entire driveway off the Pieroni's land. There is nothing being constructed as part of this application.

Chair Spanos said that the Lot Line Adjustment takes a little over six hundred (600) square feet of area off from the lot described as Map 107, Lot 064 and adds it to Map 107, Lot 065.

Chair Spanos asked if the application was complete.

Bont said that in her opinion the application is complete.

Chair Spanos noted that no waivers were requested.

Motion to accept the application as complete.

[illegible]

Motion to open public comment

Motion: John Hettinger Second: Ron Beard All in favor: 4-0

No public comment was made.

Motion to close public comment.

Motion: John Hettinger Second: OJ Robinson All in favor: 4-0

Motion to approve the application for minor subdivision, lot line adjustment between Map 107, Lot 064 and Map 107, Lot 065 as noted on the plans by Sabourn & Tower dated October, 2016, for Louis A. & Mary E. Pieroni and Ralph S. Ciarleglio on Liberty Road.

Motion: John Hettinger Second: OJ Robinson All in favor: 4-0

B. 6:00 P.M. Case # SUB MIN 2016-04 M114 L049 John Chamberlain & Susan Smith, Raymond Lagare and Robert Legare: Subdivision Application – Application for Lot Line Adjustment between 2 Lots.

Application for Lot Line Adjustment between 2 Lots – Applicants for two adjacent lots are:

- (1) John Chamberlain of PO Box 1001, Lincoln, NH 03251 who own LO White Birch Lane (Map 114, Lot 050) and;
- (2) Robert Legare on behalf of owners Susan Smith of 107 Howe Hill Road, Benton, NH 03785, Raymond Legare, Robert Legare of 99 Howe Hill Road, Benton, NH 03785, and Robert Legare of PO Box 211, Lincoln, NH, who owns LO Mansion Hill Road (Map 114, Lot 050).

The property owners of both lots are proposing a minor subdivision (lot line adjustment) between them. The applicants propose to transfer 2.0 acres from LO Mansion Hill Road (Map 114, Lot 049) to annex to LO Mansion Hill Road (Map 114, Lot 050). The size of LO Mansion Hill Road (Map 114 Lot 050) would change from 0.35 acres to 2.35 acres. The size of LO White Birch Lane (Map 114, Lot 050) would change from approximately 20 acres to approximately 18 acres. These two lots are in the Rural Residential (RR) District. The applicant's surveyor is Stephen B. Tower, surveyor, of Sabourn & Tower Surveying and Septic Design, PLLC. No new lots are being created. No additional streets, utilities or public improvements will be required.

Upon a finding that the application meets the submission requirements of the Lincoln Subdivision Regulations, the Board will vote to accept the application as complete and a public hearing on the merits of the proposal will follow immediately. 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.

Presentation:

Surveyor Tower presented on behalf of the applicants for a lot line adjustment. Surveyor Tower described the lot line adjustment and how it would subtract two (2) acres of land from a twenty (20) acre lot owned by the Legare family and add those two (2) acres to the Chamberlain's property on White Birch Lane. The configuration was agreed to by the two parties. The parties agreed to run the northern boundary for the two (2) acres up along the side of the old road going through the property.

The new lot is abutted on the south by land owned by the Town known as the Community Center lot, and on the north and east by the Legare's remaining eighteen (18) acre lot. Chamberlain will gain two (2) acres. The size of the Chamberlain lot will change from thirty-four hundredths (0.34) of an acre to two and thirty-four hundredths (2.34) acres. The Legare's lot will lose two (2) acres reducing the size of their lot from twenty (20) acres to eighteen (18) acres.

Surveyor Tower said that this will be a boundary line adjustment, not a subdivision. No construction is anticipated at this time.

Chair Spanos asked if the application was complete.

Bont said that in her opinion the application was complete.

Chair Spanos noted that no requests for waivers were made.

Motion to accept the application as complete.

Motion: John Hettinger Second: OJ Robinson All in favor: 4-0

Motion to open public comment.

Motion: John Hettinger Second: OJ Robinson All in favor: 4-0

Abutter Greg Hren asked for confirmation that both lots were in the same zoning district.

Applicant Chamberlain stated that both lots are in the Rural Residential (RR) District.

Abutter Hren asked what Chamberlain's plans were for the combined lot. Chamberlain stated that he plans to keep the original small parcel vacant and to build a single family home on the larger two (2) acre lot he plans to purchase from the Legares.

Abutter Hren asked if when the approval is given, was it possible for the Planning Board to put a condition on the land that the property owner would only be able to build a single family home.

There was a discussion about what is allowed in the Rural Residential (RR) District and whether the owner could put a business in at that location.

Robinson explained that there is nothing that a new owner can do with the lot that the current owner could not do.

Abutter Hren said that he was only concerned because he does not want someone to build twenty (20) more condo units up there.

Chair Spanos said that with a little more than two (2) acres Chamberlain would not have enough land to support that. Abutter Hren wanted to know what Chamberlain could do with the land.

Bont read from the zoning ordinance (Land Use Plan Ordinance) allowable uses under the Rural Residential (RR) District:

Residential Uses:

Duplex, Attached Accessory Apartments, Cluster Development, Planned Phase Development, Manufactured Homes.

Public Uses:

Libraries, Houses of Public Worship related to Religious functions, Museums & Cultural facilities, Schools, Health Care Facilities, Recreational facilities.

Business Uses, by Right:

Campground, Home Business, Tourist Attraction, Tourist Home

Business Uses, by Special Exception:

Detached Accessory Apartments, Airports & Heliports, Hotel, Motel, Motor Inn, Restaurant, Retail, Consumer Service.

Industrial Uses:

Earth, gravel & stone removals, Storage of contractors equipment

Bont continued a description of the lot size requirements. In the Rural Residential (RR) District the minimum lot size is fifteen thousand (15,000) square feet. For a duplex the minimum lot size is twenty-two thousand (22,000) square feet. The required setbacks are fifteen feet (15') from front, rear and side property boundary lines of the lot.

Abutter Hren said that in the summertime there are a lot of kids. Abutter Hren said that his major concerns are the amount of traffic, the type of traffic and how the traffic impacts the neighbors and the surrounding area. He asked Chamberlain if during the summer Chamberlain would be parking earth moving equipment on the lot.

Chair Spanos said that for any commercial uses Chamberlain would have to come before the Planning Board for a hearing.

Bont said that if the property owner contemplated any commercial uses that change in use would trigger Site Plan Review and all of his abutters would be re-noticed.

Bont wanted to make the Board aware that Mr. Palaza is the President of the Mansion Hill Condominium Association. Mr. Palaza was taken aback by the fact that it was his responsibility to notify the members of the Mansion Hill Condominium Association. As President of the Condominium Association he was not aware that providing notice was one of his responsibilities. President Palaza called Bont and she emailed him all the information about this lot line adjustment so that Palaza could forward the information to everyone he had an email address for in the association. Bont thought that in the past the Planning Board had discussed the requirement that when there are abutters who are part of a condominium association, the officers of the association are notified in lieu of individual notice for each individual homeowner. The officers of the condominium associations are then responsible to notify their members. Bont just wanted it on the record that Mr. Palaza was upset.

Chair Spanos asked if Palaza submitted any comments. Bont said, "No".

Motion to close the public comment

Motion: John Hettinger Second: OJ Robinson All in favor: 4-0

Hettinger asked about the trail going through the lot.

Chamberlain said that the trail going through the lot he intended to purchase was a walking path that the kids use to cut through to the Linwood School.

Robinson said that the trail is fairly well established. The trail is used by more than just young people. Residents of Mansion Hill also use the trail to access the trails up at Forest Ridge and to access the Community Center and downtown.

Chamberlain said he intends to site his home right on the spot where the trail goes through the lot as it is the flattest spot on the land he is purchasing. Chamberlain said he does not intend to allow people to continue to use the trail when his house is erected there.

Motion to approve the application for minor subdivision, lot line adjustment between Map 114, Lot 050 and Map 114, Lot 049 as noted on plans by Sabourn & Tower dated October 2016 for Susan L. Smith, Robert Legare, ET ALS and John Chamberlain on the end of White Birch Lane.

Motion: John Hettinger Second: Ron Beard All in favor: 4-0

There was a brief discussion about the trails at the top of Mansion Hill Road and the end of White Birch Lane and who uses them.

IV. NEW BUSINESS:

A. 6:00 P.M. Stormwater Management Ordinance – proposed revisions

Bont said that the Town has experienced some growing pains with the new Stormwater Management Ordinance as written. The Town got some pushback from people trying to build homes. Now she, the Town Planner and the Town Engineer know that some parts of the ordinance do not work as well as they should and will need to be modified. Bont showed the Planning Board four (4) maps with examples of undersized lots that were less than the fifteen thousand (15,000) square feet in size that were approved by the Planning Board as single family residential lots. There are many undersized lots; these four (4) lots are just a sampling. These four (4) lots are not the most recently approved lots.

Chair Spanos said the five (5) lots along the river are the most recently approved lots, however, some of the other earlier developments also had lots of less than fifteen thousand (15,000) square feet.

Hettinger asked what the color blue on the maps meant.

Bont said that the blue areas are the flood hazard areas. Bont then described the areas on the map pointing out the flood hazard areas:

- Purple-ish-blue areas indicate the 500 year flood hazard areas;
- Blue and white pin stripe areas are the 100 year flood hazard areas; and
- More intense blue areas indicate the main channel of the water in the river.

Robinson asked if the purpose of the four (4) maps was to show that the stormwater ordinance would apply to those small lots. Bont said the Stormwater Management Ordinance probably would apply to all of those lots.

Chair Spanos said that he did not think the Stormwater Management Ordinance would apply because there is no way they could disturb fifteen thousand (15,000) square feet. Bont said that the property owners would all be disturbing more than fifty percent (50%) of the land of these lots in order to put a house on the lots. Town Manager/Planner Burbank said that otherwise the lots would basically become unbuildable if they are not allowed to disturb more than fifty percent (50%) of the lot.

Bont said that the property owners can build on the tiny lots, however, they just need to comply with the Stormwater Management Ordinance and the State Building Code as it pertains to retaining walls that are greater than four feet (4') in height.

Bont suggested that members of the Planning Board might want to go look at the lots on Hemlock Drive where a number of single family houses have just been built. Land Use Permits were granted. Retaining walls greater than four feet (4') in height were required due to the steepness of the lots. Therefore, the State Building Code applied to the rock retaining walls. One of the property owners hired a structural engineer who came up with a plan for rock retaining walls. The engineer's plan said that the bigger rocks were to be placed on the bottom of the wall and the smaller rocks were to be placed on the top of the wall. After the retaining

wall was completed then the structural engineer came to look at the wall. He would not sign off on a Construction Control Affidavit for the wall. The engineer had not seen the wall while it was being constructed even though he recommended that he or someone else be hired to do so during construction.

Add to the retaining wall issues the stormwater management issues. The Stormwater Management Ordinance was not in effect at the time the 2014 Land Use Permit was granted. This means that no steps were taken on this lot to mitigate the effects of stormwater runoff. The rock walls were constructed not in accordance with the State building Code AND no provisions for stormwater management were taken. Staff is concerned about the cumulative effect on these two factors on the safety of the lot.

Robinson asked for clarification. Bont said that these two parts of ordinances were not in effect in 2014 when some of the Land Use Permits were issued:

- Article V General Regulations, Section K Retaining Walls, of the Land Use Plan Ordinance (LUPO) (and the NH State Building Code) which requires a NH licensed structural engineer to design retaining walls greater than four feet (4') in height and requires the owners to submit a set of engineered stamped "as built" plans for the retaining walls, In addition, the engineer is to certify by signing a Construction Control Affidavit that the retaining walls were built in accordance with the State Building Code and the engineered plans. This section of the LUPO was not in effect until 2016.
- Stormwater Management Ordinance was not in effect until 2016. The property owners got their permits in 2014. They did not finish building their houses until 2016.

Bont said that because Town now requires a Structural Engineer to sign a Construction Control Affidavit on retaining walls greater than four feet (4') in height, the Structural Engineer should supervise the construction of the wall, or at the very least, visit the site occasionally while the wall is being built to ensure the wall is being built to the State Building Code standards. In 2014 we granted the Land Use Permit. When the owner and contractor asked the Town to issue a Land Use Compliance Certificate in 2016, the Town required the owner to get a Construction Control Affidavit from the general contractor and the guy who built the wall. The engineer who designed the wall refused to sign the Construction Control Affidavit. Even though the wall does not appear to be in compliance with the State Building Code, both the general contractor and the subcontractor who built the wall have both signed off on the wall.

Hettinger asked if the retaining wall was on the site plan submitted by the Land Use Permit applicant. Bont said that the applicant in this particular case submitted an engineering plan for the retaining wall in 2014. However, the engineering plan does not appear to have been followed. When she, the Fire Chief and the Public Works Director inspected the property and looked at the wall they could see that significantly larger rocks were placed on top of smaller rocks.

Fire Chief Beard said that subcontractor who built the wall said he did install "mechanical stabilization". Andrews Construction did the work and he signed off. Fire Chief Beard said that in his opinion, Andrews Construction has assumed full responsibility for installing mechanical stabilization by signing the Construction Control Affidavit stating under oath that they built the "mechanical stabilization" per the design. When Fire Chief Beard looked at the retaining wall the only part of the retaining wall that shows is the actual face of the rock wall. Any evidence

that the “mechanical stabilization” of the retaining wall was installed is not visible because it is all covered up.

Robinson asked what is “mechanical stabilization”. Fire Chief Beard said that “mechanical stabilization” is when the retaining wall is engineered, the plans call for specific material to be laid on the bottom layer, then a fabric to be laid on top, then another layer of material to be laid on the fabric and then another layer of fabric to be added so that it all binds together. The purpose of the “mechanical stabilization” is so that if you put anything on top of the wall (like a car) the weight is not going to put outward pressure on the wall, causing it to fail.

MECHANICAL METHOD [of Soil Stabilization]: Mechanical stabilization is accomplished by mixing or blending soils of two or more gradations to obtain a material meeting the required specification. The soil blending may take place at the construction site, at a central plant, or at a borrow area. The blended material is then spread and compacted to required densities by conventional means.

<http://engineeringtraining.tpub.com/14070/css/Mechanical-Method-424.htm>

Town Manager/Planner Burbank said that because the Town has not adopted RSA 155-A, the Town is not authorized to enforce the State Building Code; the Town of Lincoln does not have a Building Inspector. Fire Chief Beard only can inspect the retaining wall from a safety standpoint as the Fire Chief. Therefore, at this time it is not the Town’s job to inspect the retaining wall to see that it is in compliance with the State Building Code. Currently, under the Land Use Plan Ordinance the Town requires a structural engineer to submit “as built” plans and to “sign off” (i.e., submit a Construction Control Affidavit) on rock retaining walls. However, the problem arises if the homeowners will not pay their structural engineers to make periodic inspection visits to ensure retaining walls are being constructed in compliance with the State Building Code and the engineered plans. Then the structural engineers will refuse to “sign off”.

Hettinger asked Bont, whether when Brian Holub applied for a Land Use Permit to build his house in 2014, did he agree to meet the requirements of the NH State Building Code? Bont said that Holub did agree to do that, however, in the opinion of Town Staff, the retaining walls, as built, do not appear to meet the State Building Code requirements.

Hettinger said, “So they are saying that their rock wall meets the codes?” Town Manager/Planner Burbank said that his position was that when they called him as a last resort, Burbank told the contractor and the property owner that someone needed to sign the Construction Control Affidavit, taking responsibility for the retaining wall, not the Town. Then the property owner and his contractor “will own it” if these property owners homes and walls cascade down the hill because the retaining wall they installed lets go.

Bont said that Fire Chief Beard measured the Holub retaining wall and the wall is nineteen feet (19’) tall.

Town Manager/Planner Burbank said that when the structural engineer who designed the retaining wall said he would ***not*** “put his name on it”, then the general contractor said he did not think that he had a choice other than to sign the Construction Control Affidavit for the retaining wall.

Chair Spanos said, “It is not that the engineer has an issue with the finished product, it is that he didn’t see the retaining walls go in?” Town Manager/Planner Burbank said he does not blame the engineer for not wanting to risk the engineer’s reputation or license. The property owner was

not willing to pay the engineer to periodically inspect the retaining wall during construction to make sure the wall was being erected in accordance with the engineered plans and the NH State Building Code.

Fire Chief Beard said that he told the contractor and the engineer that the rock face did not follow the engineer's specific design. The plan indicates that the largest rocks go on the bottom and the size of the rocks should get smaller as they go up. Beard said that according to the engineered plans, the largest rock on the bottom should be at least half the width of the total height of the wall.

Robinson said that if that was the case, that would mean that the subcontractor would have to put down nine and a half foot (9 ½ ') rocks on the bottom of the retaining wall. Fire Chief Beard said that when the engineer came to look at the retaining wall the engineer could not inspect the depth of the rocks on the bottom. The engineer could not see or measure how large the bottom rocks were.

Bont recommended that the members of the Planning Board should go to the site and stand at the bottom of the retaining wall and look up at it. Fire Chief Beard said that the wall as seen from below is intimidating. Bont agreed.

Town Manager/Planner Burbank said that from an enforcement standpoint, property owners are hiring contractors to build these houses. The retaining walls are going up late in construction. The Town's options are to tell the property owners to either:

- 1) Cease and desist; or
- 2) Tear the wall down

Town Manager/Planner Burbank said the next letter would come from the property owners who will say they are suing the Town.

Robinson agreed, but said that the Town does not have to issue a Land Use Compliance Certificate (LUCC).

Town Manager/Planner Burbank said if contractors come in and say all the right things, for example, that the plans have structurally engineered walls, then the Town has no choice but to issue a Land Use Permit and let the contractors start construction.

Robinson said that the Town's role is not to monitor the construction. If the contractor or the property owner comes in with plans that meet engineering approval, that is it as far as the Town is concerned.

Bont said that if the owners or contractors do not have the engineer "sign off" (i.e., a signed and notarized Construction Control Affidavit) on the rock walls, the Town does not issue them a Land Use Compliance Certificate (LUCC). Bont said that there are still a few more houses that were permitted prior to 2015 that may have issues. Chair Spanos said he thought that going forward those problems eventually should go away.

Town Manager/Planner Burbank if there is any type of financing involved, the soundness of the retaining walls is a big concern to the mortgage lenders. Mortgage lenders will want to see the Land Use Compliance Certificates (LUCC) for those walls. When property owners pay cash, they do not seem to care about getting a Land Use Compliance Certificate (LUCC).

Chair Spanos said that the retaining walls should be constructed much better going forward.

Town Manager/Planner Burbank said that is the point; we hope the walls are much better.

Robinson asked if property owners do not get a Land Use Compliance Certificate (LUCC), is there something we can put in the property file (“map and lot file”) that says something like, “Because the wall is not signed off by a New Hampshire Licensed Structural Engineer, a Land Use Compliance Certificate was not issued”. Robinson said that years from now when this Planning Board is made up of different people, he would like them to be able to find something in the property record file that explains why a Land Use Compliance Certificate (LUCC) was not issued.

Town Manager/Planner Burbank said that we could have a denial letter to put in the file.

Bont said that the members of the Planning Board should also check out the retaining wall up at Coolidge Falls. A contractor is working on a property up at Coolidge Falls. As part of the project a contractor built retaining walls to hold the hill back behind the foundation. According to Fire Chief Beard, the rock walls are very bad there. All the people who are working on the house and the property manager for Coolidge Falls keep asking if the Town can do something about the poorly built retaining walls. Town Manager/Planner Burbank said that the workers at the site are timid as they are putting the house up because they feel they are looking at a potential land slide behind them.

Fire Chief Beard said that he asked both the subcontractor who built the wall and the general contractor numerous times for the engineering “sign off” on the Ricciardelli retaining wall at 2 Blueberry Road at Coolidge Falls. The last thing Fire Chief Beard was told was that the subcontractor who built the wall had to go back and “fix some things” and then the engineer will sign off. Fire Chief Beard said the conversation took place over a month and a half ago. Today that still has not happened.

Bont said to keep in mind that many people who buy second home property in Lincoln are not financing their purchase with a mortgage so they do not seem to care if they receive a Land Use Compliance Certificate or not. They just move right in once the house is built.

Robinson said that sometime down the line, the second owner, third owner or twelfth owner is going to need a copy of the Land Use Compliance Certificate (LUCC) in order to sell or mortgage the house; the LUCC is not going to be there and they are not going to be able to get it.

Fire Chief Beard asked if the Land Use Compliance Certificate (LUCC) is denied, can that denial be recorded in the Grafton County Registry of Deeds on the deed for that property. Town Manager/Planner Burbank said that anything can be recorded. Fire Chief Beard said that way the denial of the Land Use Compliance Certificate (LUCC) would be recorded in the Grafton County Registry of Deeds. If someone is looking to purchase the home, if a realtor researched the property at the Registry of Deeds, he/she will find a recorded statement that the Land Use Compliance Certificate (LUCC) was denied by the Town. “It won’t go any further.”

Chair Spanos said that there should be something on file with the Land Use Permit that says why the Land Use Compliance Certificate (LUCC) was not issued. Bont said that she has never recorded anything like that.

Fire Chief Beard said that if the sale of property is a cash transaction, from one owner to the next, without the review and oversight by a mortgage lender the recorded denial of the Land Use Compliance Certificate (LUCC) is not going to matter.

Robinson said that he was not sure what it would cost to record such a document, but the denial statement could be a single piece of paper.

Bont thinks that the Town should get legal advice. The document has to show up in the chain of title. The Grafton County Registry of Deeds has to be willing to record it. The cost to record a document at the Grafton County Registry of Deeds is twelve dollars (\$12) for the first page and four dollars (\$4) for each additional page.

Fire Chief Beard said that the Town could advise the owner at that time that the Town's denial of a Land Use Compliance Certificate (LUCC) is going to be recorded at the Grafton County Registry of Deeds. The owner may just say that they do not want something like that impacting their deed.

Robinson said that he thought twelve dollars (\$12) to record the document was cheap insurance.

Town Manager/Planner Burbank said that the Town should just pay to record the document because it might help to protect the Town from liability in the event the retaining wall fails and causes damage to persons or property.

Bont said that the Town should get legal advice. Perhaps the Town would have to create the document to look and act similar to a tax lien. Bont said that the Town cannot arbitrarily record just any document in the Registry. The Town can record a property tax lien. Someone who does work on a property can record a mechanic's lien. The Town would have to record the document in such a way that the recorded document would show up in the chain of title in such a way as to give adequate notice to potential purchasers.

Chair Spanos said that such a document technically would not be a lien. If a potential purchaser performs a title search the document would need to appear in the chain of title. Then they would have to be able to determine if the document that the Town records amounts to a "cloud" on the title.

Bont said that what the Planning Board is suggesting is tricky; we would have to ask Town counsel about how to do this, if it is possible.

Chair Spanos said that first, people sign purchase and sale agreements before they actually purchase the property. Then the potential buyer performs a title search and finds our document and says "wait a minute!" It is more important that the document show up in the chain of the title, however, it should not affect the deed.

Bont and Town Manager/Planner Burbank will look into seeing if the Town can legally record a document that says that a property did not satisfy the requirements necessary in order to get a Land Use Compliance Certificate (LUCC).

Stormwater Management Ordinance:

Chair Spanos said (moving on to the Stormwater Management Ordinance) that only page 3 is highlighted on the Stormwater Management Ordinance and it has gone from 1 ½ pages to 3 pages.

Bont said that she highlighted the part of the proposed amendment to the Stormwater Management Ordinance that was "the nugget" of what they proposed to change. The Town Attorney and the Town Engineer recommended that we move the section that refers to fifty percent (50%) of the lot up to the Applicability section based on the challenge we got from a

property owner who thought the ordinance should not apply to his property. She wanted to call attention to that change. She included an e-mail back and forth discussion between her, Town Manager/Planner Burbank, Town Attorney Peter Malia and Town Engineer Ray Korber so they could see the arguments and discussions about the proposed changes.

Robinson said that the red lined version of the Stormwater Management Ordinance was the most helpful to him. Robinson read through that version and it made good sense to him. It is for the defining of what was applicable and it also gives options of how to abide by it.

Bont said that Ray Korber was looking for a little more flexibility because sometimes he was more concerned with what may happen to stormwater runoff during the construction phase of a project. For other projects he might be more concerned about what happens to stormwater runoff once the project is complete. Sometimes he might be concerned about the level of ongoing maintenance is required. Every property is unique and, therefore, a little bit different.

Chair Spanos asked if the project requires a culvert, would the property owner who installs the culvert be required to keep the culvert dug out or could he be required to perform some other types of maintenance. Bont said yes. Under the proposed amendments to the Stormwater Management Ordinance a Post Construction Operation and Maintenance (O&M) Plan would be recorded in order to put potential purchasers and property owners on notice and before the Town issues a Land Use Compliance Certificate (LUCC).

Hettinger asked who marked the proposed amendments copy up. Bont said that initially Town Engineer Ray Korber did. Then the draft was sent to Town Attorney Peter Malia. The draft was passed between Town Manager/Planner Burbank, Town Engineer Ray Korber, Town Attorney Peter Malia and I to review it and make suggestions about how to make it work. Town Manager/Planner Burbank said that it was ultimately Town Attorney Peter Malia who told us where to put the new section. Bont said that Town Engineer Ray Korber said this is what we need. Then Town Attorney Peter Malia said this is where it should go.

Motion to recommend the changes to the Storm Water Management Ordinance and bring it forward to public hearing on December 14, 2016.

Motion: OJ Robinson Second: John Hettinger All in favor.

B. 6:00 PM. Land Use Plan Ordinance - Discussion in general about proposed changes to Land Use Plan Ordinance:

1. **Attached Accessory Dwelling Units** – Do we need to make amendments to bring our ordinance into compliance?

Discussion re: Attached Accessory Dwelling Units

Bont said that Lincoln is in pretty good shape with its section for accessory dwelling units (ADU) in the Land Use Plan Ordinance (LUPO), however, there are a couple of places where LUPO does not quite fit with the new state mandate so she wanted the Planning Board members to review the new mandate and to decide whether or not they want to do anything to address those differences or deficiencies.

Bont said “accessory dwelling units” are addressed in the Land Use Plan Ordinance (LUPO) as follows:

- LUPO on page 13 reads “accessory apartments” instead of “accessory dwelling unit”. Does the Planning Board want to change the language to “accessory dwelling unit”. Or does the Planning Board want to recommend changing the language of “accessory apartment” to “accessory dwelling unit”.
- LUPO on page 19 has a section about “accessory apartments” and indicates how many parking spaces are needed per accessory apartment.
- LUPO on page 21 has a section on “accessory apartments”.

Bont told the Planning Board to look at the materials about the new legislation on “accessory dwelling units” (ADU) we received from Chris Northrup, MRA Principal Planner, who is the head planner at the NH Office of Energy and Planning. Northrup sent out the final version of the Senate Bill 146 to all municipalities. Bont marked Senate Bill 146 up on the page where it says “two interior doors shall be provided” between the principal dwelling unit and the accessory dwelling unit. Senate Bill 146 says the Town cannot require the door to be unlocked.

Bont said that the State legislators discussed how they wanted to make the new law more palatable for communities who currently do not allow accessory dwelling units to allow accessory dwelling units by including language that required an interior door between the primary dwelling unit and the accessory dwelling unit. The reason for requiring the interior door is to allow the property owner to reabsorb the accessory dwelling unit into the primary dwelling unit with little effort by the current owner or the subsequent owners. Lincoln’s LUPO does not have such a provision.

Robinson said that it sounds to him like the State is mandating an interior door between a primary dwelling unit and an attached accessory dwelling unit. Bont agreed. Chair Spanos said that the Town cannot require that door to be unlocked.

Hettinger asked why the new legislation included the requirement that there had to be two doors. Bont said that there has to be an interior door between the primary dwelling unit and the accessory dwelling unit. Chair Spanos said that the reason for the requirement for the interior door was to make the accessory dwelling unit essentially an “in-law apartment” and not a “two family” or a duplex.

Bont said that in terms of size, the current LUPO size limitation is in accordance with the new legislation. LUPO allows an attached dwelling unit to be up to one thousand (1,000) square feet. The property owner can petition the ZBA for a Special Exception to allow an attached dwelling unit to be more than one thousand (1,000) square feet. The new legislation just says an attached accessory dwelling unit cannot be smaller than 750 square feet.

Bont said the new legislation does not allow municipalities to require that the dwellers of the primary dwelling unit and the attached accessory dwelling unit have a family relationship. Bont said Lincoln’s LUPO does not require a family relationship between the dwellers of the primary dwelling unit and the attached accessory dwelling unit. Lincoln’s LUPO does not have anything that requires a family relationship between the dwellers of the primary dwelling unit and the dwellers of the attached accessory dwelling unit.

Robinson said that he did not think Lincoln had any restrictions that were family related.

Bont said that the only one place in the LUPO where there is a requirement that persons in a residential dwelling unit be related if there are more than three (3) is Article V (General Regulations), Section J (Limit on Boarding Houses).

Section J. LIMIT ON BOARDING HOUSES.

1. In the Village Residential, General Residential, Rural Residential and Mountain Residential districts, no more than 3 persons who are unrelated by blood or marriage shall live together in any residential unit. This prohibition includes one-family detached dwellings, accessory dwelling units, dwelling units within a duplex, and housing units within multi-family housing.
2. 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.
3. Residential units, whose use for more than 3 unrelated persons became established before the enactment of this section, may be continued as non-conforming uses under Article III, unless and until such use is abandoned under Section C(1) of Article III, but the number of such persons shall not be increased without a special exception under paragraph 4 below.
4. The Zoning Board of Adjustment may grant a special exception, applying the standards of Article VIII, which waives either the 3-person limit of paragraph 1 or 6-month limit of paragraph 2. The Board shall state specifically what alternative limits will apply to the property.

Town Manager/Planner Burbank said that the Town does not want to get into checking people's DNA. Town Manager/Planner Burbank said that the section on "Limit on Board Houses" of the LUPO is designed to address problems that arise when someone buys a large home and sections it off, creating an apartment house in a zone where apartment houses are not allowed. The new legislation allows a property owner to create multi-family housing in a district where multi-family housing generally is not allowed. The property owners can create multi-family housing; they just have to keep an interior door between the primary dwelling unit and the accessory dwelling unit.

Chair Spanos said "It kind of pats the property owner on the nose a little bit." The property owners could be more aggressive about vetting who they rent to if there was an interior door between them and their tenant.

Town Manager/Planner Burbank said that some communities are more impacted by this legislation than Lincoln is. A lack of workforce housing coupled with restrictive zoning is the reason why the legislature created the statute. The statute defeats the whole purpose of having a zoning ordinance.

Bont said that allowed attached accessory dwelling units counts toward "Workforce Housing". In terms of being in compliance with the state requirements that we provide a certain amount of workforce housing, the new legislation may be a good thing because we have a lot of attached accessory dwelling units in Lincoln already. Those attached accessory dwelling units can count towards that workforce housing goal.

What is Workforce Housing?

The basic requirements of RSA 674:58-61 essentially come down to:

- Provide reasonable and realistic opportunities for the development of workforce housing.
- Provide reasonable and realistic opportunities for multi-family housing (5+ dwelling units), including rental multifamily units.
- Lots sizes and density requirements for workforce housing “shall be reasonable”
- Allow workforce housing on >50% of residentially zoned land area.

In terms of planning and zoning, RSA 674:58-61 states:

All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers.

http://www.londonderrynh.org/Pages/LondonderryNH_BComm/planning/work.pdf

Town Manager/Planner Burbank said that the new legislation might make for less expensive housing for families that “chunked” off a piece of the primary dwelling unit, put in a door between the two units and then just locked the door between the accessory dwelling unit and the primary dwelling part of the house.

Chair Spanos said that there is a question requiring one of the apartments [dwelling units] to be occupied as a principal place of residency by the owner of the property.

Bont said she also had that question. Senate Bill 146 says:

Senate Bill 146, Page 2, VI A municipality may require owner occupancy of one of the units but it shall not specify which unit the owner must occupy. A municipality may require that the owner demonstrate that one of the units is his or her principal place of residence, and the municipality may establish reasonable regulations to enforce such a requirement.

Bont said that we do not require any of that but it says that the municipality “may” make these requirements. Bont said the Planning Board may want discuss it and then decide whether or not to add any of these requirements.

Chair Spanos said the issue of requiring the property owner to have one of the dwelling units as a principal place of residence is only relevant at the time the property owner applies to put in an in-law apartment. If they decide after they get the permit and create an accessory apartment that they are moving to Florida, “it’s done”. The accessory apartment is now in existence.

Town Manager/Planner Burbank said the Town learns about these unauthorized accessory dwelling units (ADU) in a number of ways. For example, the Town stumbles onto an unauthorized ADUs in a number of ways:

- Assessing the property.
- Emergency Services receive an E-9-1-1 call from an unauthorized ADU.
- Neighbor complain because an ADU has become a college fraternity party house in a quiet residential neighborhood.
- Neighbors complain that there is a whole house is full of college kids while the owner is away in Florida for the winter.

Town Manager/Planner Burbank said the Town could not enforce that part of the zoning ordinance unless someone else brought a violation or problem to the Town's attention. Fire Chief Beard said, "Like 20 or 30 bicycles outside a duplex".

Chair Spanos said that if he had a duplex or a primary residence with an attached accessory dwelling unit and then he sold the house after he put the in-law apartment in the house, the in-law apartment would still be there. Could the Town require the next owner to remove it? Town Manager/Planner Burbank said, "No."

Bont said that if the Town required that one of the units to be occupied by the owner as the owner's principal place of residence, then if the owner had that door in between his dwelling unit and the second dwelling unit, the owner could just unlock the door of that extra unit and integrate the accessory dwelling unit into the main house. This piece of legislation looks like a piece of compromise legislation; One Town says "No. We don't want any attached accessory dwelling units" and it has to be removed as soon as the property owner leaves or dies and another Town saying, "Well what if the owner dies, we are in the housing crunch, so perhaps we could allow these accessory dwelling units to continue even if the owner no longer uses the house as a primary residence. The Town can decide that it does not want to require an owner to live in the house at all, or it can decide that the owner must live in one part of the house.

Robinson said that with our current zoning ordinance (LUPO) Lincoln has a policy in favor of allowing attached accessory dwelling units (aka "accessory apartments"). Lincoln does not require one of the units to be owner occupied or any of that. Robinson said that he could see that interior door being another piece of compromise legislation. The Town of Lincoln did not do this and Robinson said he was not sure the policy "adds value".

Bont said that she does not think that adding an interior door between the two dwelling units would add value, but having a separate entryway for the accessory dwelling unit and not having the interior door in-between the two dwelling units would add value. Lincoln has incentives in the LUPO to build a duplex because we require less density for a duplex than we do for two individual units.

Robinson said that the Planning Board should consider the ramifications if they require all property owners who own houses with an attached accessory dwelling unit to be owner-occupied. They would not be allowing any short term rentals. If they want to make attached accessory dwelling units true "workforce housing", they would need to require at least one dwelling unit to be owner occupied. That means they would not be allowing short term rentals.

Town Manager/Planner Burbank said that in our environment that is a challenge. How do you monitor/enforce that? Robinson said that you start the enforcement by saying that "These attached accessory dwelling units are for workforce housing. How do you enforce it once you have a law on the books? You let people know what the law is in advance and then enforce it.

Chair Spanos said that he does not want to restrict Airbnb-type rentals.

Town Manager/Planner Burbank said that there are several examples of Airbnb-type rentals in Town. Over by Joe Chenard's house, Nicholas and Mary Ciarleglio at 40 Liberty Road (Map 107, Lot 066) where that little cul-de-sac at the end of Liberty Road has a house and two cabin foundations. Ciarleglio has been renting out his house periodically on AirBnB. He is saving up money to build two cabins on the foundations to turn them into short term rentals. Nicholas & Mary Ciarleglio successfully rented out their home and now they want to build the cabins to rent those out. Their property is in the General Use (GU) District. Let's say that property existed in the Rural Residential (RR) District, or some other residential district. The idea of zoning an area "residential" is not to have that type of business in the neighborhood.

Bont said that Ciarleglio came in and said he was going to put both cabins up. First, he would put one cabin up and as soon as he makes enough money renting it out he would put the second cabin up. His father installed the foundations. He maintained those two foundations for 20 years, keeping them clean and mowing around them. His lot is not big enough to create three (3) units if he were starting from scratch. At this point he is deterred by the cost of the water and sewer tap fees. He is saving up enough money for water and sewer tap fees. He has a relative who is willing to erect the cabins. The cost of the water and sewer tap fees and bedroom impact fees was the "make or break" for him. If he can go through with it, there will be three (3) units there and they will all be AirBnBs. Right now he goes somewhere else to stay when he rents out his house.

Chair Spanos said that the Land Use Plan Ordinance (LUPO) seems to be working fine as it is. Robinson agreed. Robinson said that the Planning Board should leave the Land Use Plan Ordinance (LUPO) alone.

Robinson asked Bont if all the changes she was recommending have been addressed by the Board. Bont said that she was thinking the Planning Board should recommend changing the definition of "accessory apartments" to "accessory dwelling units" because that is the language used in the state statute.

Robinson asked if we need to go to town meeting just to change that one word. Bont said, "yes".

Bont said another good reason for changing the words "accessory apartment" to "accessory dwelling unit" would be to make it more obvious for the State to give Lincoln credit for creating work force housing when they were looking at our zoning ordinance to see whether or not we are allowing accessory dwelling units.

Chair Spanos said that he does not think a change in the LUPO is necessary; "Apartments are the same as dwellings." Robinson agreed.

Discussion re: Definitions of Building and Structure.**2. Definitions:****a. Building & Structure as defined in the Land Use Plan Ordinance**

Building – Any three (3) dimensional enclosure supported by columns or walls intended for the shelter, housing or enclosure or any individual, animal, process, equipment, goods or materials of any kind or nature. Building – also see Structure.

Structure – Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground excluding amusement devices. Structure, for floodplain management purposes, also includes a walled and roofed building, a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Bont was hoping that the Planning Board would recommend including language about “retaining walls” and “window wells” under “structure”. “structure, also includes retaining walls greater than four feet (4’) in height and window wells.”

Town Manager/Planner Burbank said that we have to be careful. A regular window well would not qualify as a “structure”. The “thing” added to the house on School Street was a really a separate “foundation” and should have been considered a “structure” under the current definition as is.

Bont explained what Frank Mulligan on 29 School Street (Map 113, Lot 103) did to his house. He poured a four foot (4’) deep, and fifteen foot (15’) long “foundation” in front of the large windows along the side of his basement and called it a “window well”.

Town Manager/Planner Burbank said that the “foundation” as described is a “structure”.

There was a brief discussion about window wells versus foundations and how to include them as a structure. Town Manager/Planner Burbank said that we cannot possibly legislate everything that comes up. If we get things of certain sizes that are affixed to the ground, it is a “structure”.

Robinson asked at what point would the structure as described fall under NH State Building Code. Town Manager/Planner Burbank said when the foundation reaches more than four (4) feet high. Fire Chief Beard and Bont concurred. Fire Chief Beard said that anything that is greater than four (4) feet in height is a “structure”. If it is four (4) feet down and two inches above grade, he would consider it to be a “structure”. Chair Spanos said would that be similar to a retaining wall. Town Manager/Planner Burbank said, “Yes”.

Robinson would be in favor to make it clear what a structure is. Chair Spanos said that then you would put “structure”, not “retaining wall” or “window well”.

Bont said that she was thinking about saying “including but not limited to, retaining walls, concrete foundations, window wells”. Robinson added, “that are four feet (4’) or more in height”.

Robinson said that he has a rock wall in front of his house, but it is less than two (2) feet in height. Robinson said that he just wants to make sure that we define a structure correctly. Bont said that she believes what Robinson has would probably be defined as a fence.

Robinson said that as long as we put the four (4) foot in the definition it is fine with him.

Town Manager/Planner Burbank asked if that change would have to go to town meeting. Bont said yes, anything that is amended in the Land Use Plan Ordinance (LUPO) needs to go before town meeting.

Chair Spanos said that we can have a hearing and maybe we will get comments from residents, maybe we won't. Town Manager/Planner Burbank said that there is always someone who will try to figure a way around the zoning ordinance no matter how many times we make these changes. Chair Spanos said that if you get ten (10) attorneys you will get ten (10) answers.

Robinson said that we need to figure what language will make these rock walls and retaining walls and concrete foundations part of what is defined as a "structure".

Town Manager/Planner Burbank said that he believes we should look to the State Building Code and follow that. Burbank said he thought that a definition of "structure" was in Section 18 of the NH State Building Code. If we pull out the section, we should put that in our Land Use Plan Ordinance (LUPO).

Beard said that it should be by the adopted building code. This year Life Safety 101 2015 was adopted June 30 and there are certain sections of that that conflict with NFPA1. The Fire Marshall's office response to Beard and the other Fire Chiefs was "go with the most stringent".

Bont said that she will talk to Beard after the meeting to get the wording correct.

"Permanent Structure" and "Temporary Structure" – Should these terms be defined in the Land Use Plan Ordinance?

a. Discussion re: Temporary Structures versus Permanent Structures

Bont said that where she first heard about people wanting to erect fabric tents to cover their cars or sand piles she envisioned a "temporary structure" as being a building made of fabric shaped something like a tent or a Quonset hut with a limited life expectancy. Over the past two years she received approximately five calls from people asking whether or not they needed to get a Land Use Permit for a "temporary" tent-like structure. People who called said that they should not have to get a Land Use Permit for these temporary structures because they are "temporary". When you look on the internet or in a magazine at a temporary fabric Quonset hut or tent the "temporary buildings" appear to be made of fabric which you would assume would have a limited life expectancy. However, when someone actually installs a huge Quonset hut or a fabric tent like the "tent" Herbert Lahout put over his sand pile and heavy equipment behind the "Lahout's Square Mall" owned by Herbert Lahout Shopping Center, Inc., suddenly you notice that the "tent" is huge in size. It is anchored to either a row of concrete blocks or a concrete foundation and the "tent" is not really such a "temporary structure" after all. The tent/Quonset hut could last for several years. In Bont's opinion, a "temporary fabric tent or Quonset hut should fall into the category of either a "building" or a "structure" and require a Land Use Permit.

Bont's question to the Planning Board was, "Do you have any ideas about how we should perceive or treat these tents or Quonset huts for zoning purposes".

Fire Chief Beard said that the Quonset huts and fabric tents fall under the definition of "tent" in the NFPA Code. A tent is considered a "temporary structure" if it is up for no more than one hundred eighty (180) days. When the life span of a tent or Quonset hut goes past the one hundred eighty (180) days it is considered to be a "permanent structure". Fire Chief Beard said

that he has gone through all these issues with both Loon Mountain and the Highland Games tents. The Quonset huts people install like the one up the road here (at the Herbert Lahout Shopping Center Inc.) he has had up for more than two (2) years now. Lahout put the tent on cement blocks. The structure is basically a tent structure, that has been there for more than one hundred eighty (180) days, so now it is considered a “permanent structure” and it needs to follow State Building Codes.

Town Manager/Planner Burbank said that the “tent” behind the Lahout Shopping Center should also follow our local Land Use Plan Ordinance and meet all of the setbacks requirements as well as the Site Plan Review requirements. Fire Chief Beard agreed.

Chair Spanos asked what if Lahout only puts the tent up in the summer and then takes it down.

Fire Chief Beard said that under the NFPA Code if the “tent” is up less than one hundred eighty (180) days it is considered a “temporary structure”. As soon as it is up for more than one hundred eighty (180) days it is considered a “permanent structure”. The same should apply for the Land Use Plan Ordinance.

Bont said that we have two businesses that have recently erected “temporary structures” that are there permanently. Both are using them for as a garage for a business. They are using the tents for property management, storage of heavy equipment, and salt and sand storage.

- Bont said that Paul Beaudin has a “tent” behind his house on 2 Louis Lane (Map 117, Lot 069). A couple of years ago Beaudin called Bont to tell her that he was going to install it. Beaudin also told Bont that he did not think that the Land Use Plan Ordinance (LUPO) applied. Beaudin said he believes the “tent” is a “temporary structure” which is not defined in our Land Use Plan Ordinance (LUPO).
- A couple of years ago Herbert Lahout called to tell Bont that he intended to erect a “temporary” tent over his salt and sand pile at 165 Main Street behind Aubuchon Hardware Store. Now he has a tent like structure erected behind Aubuchon Hardware Store. He did not think he needed a permit as the building was “temporary”. The building is on huge cement blocks and has been there for about two years.
- Last year Don Landry called about putting one up at his landscaping business on US Route 3 (Green Ink) to store materials and equipment under. Chair Spanos said that Don Landry has Site Plan Review approval for his Landscaping business. Bont agreed, but he does he need a Land Use Permit for the building?
- Brenda Clark has one at 64 Railroad Street (Map 112, Lot 019) that they keep the Hobo Railroad trains under.

There was a brief discussion about how many of these structures are around town.

Town Manager/Planner Burbank asked the Board if these structures were something the staff should worry about. There have been three complaints about Paul Beaudin’s tent.

Chair Spanos asked if the complaint was because of the structure itself or because Beaudin is running a business out of a residential neighborhood. Bont said, both.

Robinson said that he could see them allowed in the General Use (GU) District as part of operating a business, like Don Landry. So long as the buildings did not encroach into the setbacks, or take up parking spaces that were allocated per whatever their use was, Robinson does not see a problem with permitting these buildings. Robinson said he was not sure that these

types of buildings should be regulated.

Robinson gave a hypothetical example of a generic Aubuchon Hardware Store. For example, if Aubuchon's Site Plan had fifty (50) required parking spaces for his business and Aubuchon was suddenly using three (3) of the parking spaces for a Quonset hut – for a permanent/temporary building. Robinson said he would see that as an issue. Or if Aubuchon was using the tents or Quonset huts in a Residential District, or in a zoning district zoned for anything other than business. Robinson sees that as an issue.

Bont said that the staff at the Planning Office would not see property owners for any reason if the property owners did not have to come into the Planning Office for a Land Use Permit. Town Manager/Planner Burbank said that Planning staff would have to stumble onto the tents or Quonset huts, but once we do, do we have the regulations to use enforcement?

Robinson said that the Town has to start with regulations. The Planning Board's designees cannot enforce regulations if the rule is not in the regulations.

Chair Spanos said that it would have to happen often enough that the town needs to worry about it. Town Manager/Planner Burbank said that the Town is starting to get complaints.

Robinson said that if they don't have enough parking spaces to begin with and they take some of them out of service because of these temporary buildings, Robinson sees that as an issue.

Chair Spanos said that it is happened once. Spanos asked if the shed in the back of Aubuchon Hardware Store was going away. Town Manager/Planner Burbank said apparently not. The person who operates his property management business out of the tent said he was moving the tent and his property management operation, but he has not.

Fire Chief Beard asked the Planning Board, "If we stumble onto one [tent] that is in the setback and is non-compliant and is over one hundred eighty (180) days, we can say that they need a building permit because it is written into code that they would have to get a building permit?"

Chair Spanos said that we would not need to add anything new to the Land Use Plan Ordinance (LUPO).

Fire Chief Beard said that anything defined as a "tent" (like a fabric Quonset hut) that measures over twenty feet by twenty feet (20'x20') requires a building permit per the State Building Code. If a "tent" is up longer than one hundred eighty (180) days it is definitely going to need a building permit because it is not a "temporary structure".

Chair Spanos said that if someone puts up a structure that eliminates parking spaces, that creates a Site Plan Review violation.

Bont said that she believes that something needs to be added to the Land Use Plan Ordinance (LUPO) even if it comes straight from the NFPA Life Safety Codes and NH State Building Code.

Fire Chief Beard said that the Board should create an informational bulletin for property owners about how "temporary structures" are defined by the NH State Building Code. Then give the property owners copies of what the currently adopted codes say so that they are well informed.

Bont said that the problem is that we have not adopted RSA 155:A which authorizes local municipal enforcement of the NH State Building Code. Consequently, the Town does not issue Building Permits (BP); the Town issues Land Use Permits (LUP). The Town does not issue Certificates of Occupancy (CO); the Town issues Land Use Compliance Certificates (LUCC).

Bont does not think that the Land Use Plan Ordinance has what it needs to allow enforcement on this matter. Chair Spanos said that staff could research this and find something online that would work.

Fire Chief Beard said that the Town's failure to adopt NH RSA 155-A and hire a Building Code Enforcement Officer does not give property owners the right to not be compliant with the State Building Codes.

Town Manager/Planner Burbank said that Chief Beard enforces the Life Safety aspects of the State Building Code and these Life Safety matters do not have to come under the jurisdiction of the Planning Department.

Robinson said that he thought it would be helpful for everyone to redefine "structure" to include what Chief Beard said about being a tent greater than four hundred (400) square feet and erected for more than one hundred eighty (180) days. It should be spelled out in our ordinance.

Fire Chief Beard said, "We will get the language from the [NH] State [Building] Code." Chair Spanos said that we would just be copying the language. Bont asked if at the next Planning Board meeting they could discuss the language.

Robinson said for both "structure" as including a rock wall greater than four feet (4') in height and the definition of a "temporary structure".

Bont asked if the public hearing was going to be on it. She was worried about the timing. There is enough time if she has the language by December 14th to post for the public hearing on December 28th. There was a brief discussion about how and when to post for the public hearing. Robinson suggested that the regular meeting would be held at 6:00 PM and to schedule the public hearing for 7:00 PM.

Robinson said that the definition of a "structure" as it relates to rock walls would need to be defined. Robinson asked if the hearing for the Stormwater Ordinance was under the same deadline. Bont said, "Yes". Robinson asked if that hearing could also be the same day. Bont agreed.

There would be two ads in the paper. Bont will post both in the next paper.

3. Floodplain Development District - Change "Building Inspector" to "Board of Selectmen or designee".

Chair Spanos said that it would be a housekeeping change to remove "building inspector" from the ordinance and replace it with "Board of Selectmen or designee".

Robinson asked if it had to go to "Town Meeting". Bont and Chair Spanos both said that the change would need to go to Town Meeting.

C. 6:00 PM. Sign Master Plan Update 2017

Sign Ordinance – Should we wait to bring the ordinance into compliance next year?

Bont said that she did not want to discuss the Sign Ordinance, but just wanted to let the Board know that she did copy the Sign Ordinance that Ben Frost created for the Town of Warner for their review.

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

Whether or not to define “bedrooms” for the purposes of assessing Bedroom Impact Fees

Bont explained that the problem caused by not having a clear definition of “bedroom” arises because it appears as a matter of course, that people are attempting to cheat on their Water & Sewer Tap Fees & Bedroom Impact Fees sheet by either underestimating or not accurately reporting the number of applicable fixtures and bedrooms. There is a fee charged per bedroom in addition to water and sewer tap fees. People just do not want to pay the applicable fees. The monies from those fees help pay for upgrading the Town’s infrastructure. Because the Town does not charge for water or sewer or other infrastructure impacts, this is the Town’s only source of revenue for these expenses other than taxation.

Bont said there is no definition of “bedroom” in the Land Use Plan Ordinance. Bont thought that a good clear definition of “bedroom” would help the person who has to assess and collect the Water and Sewer Tap Fees and the Bedroom Impact Fees. It seems to her that property owners and contractors go out of their way to cheat the Town of fees and consider it a form of high art to avoid paying these fees. For example, is a bedroom-sized room with a lockable door and a closet, but lots of computer office-like built-ins considered a “study” or a guest “bedroom” if there is a large pullout sleep-couch in it? Are five (5) bedroom-sized rooms with lockable doors and no closets considered “bedrooms”? Is a large room with several built-in bunks considered a “bedroom” if there is no closet? Should they be charged a “Bedroom Impact Fee” for these rooms? The homeowners all argue “it’s not a bedroom”.

Fire Chief Beard said that the contractors and homeowners do not like all three people (Fire Chief, Public Works Director and Planning & Zoning Administrator) all showing up at the same time to inspect. Lately, all of their inspections have caught extra water & sewer taps and extra bedrooms.

Bont said that at one of the last homes they inspected, the homeowners/contractor put in one (1) unreported large Jacuzzi, two (2) laundries instead of (1) one, five (5) outdoor spigots when they reported only one (1) on the form, and seven (7) bedrooms instead of six (6), with another large bedroom-sized room and a small room framed out with plumbing stubbed out in the basement. “A bedroom? A bathroom? Oh no, our homeowners’ association said we cannot having bedrooms in the basement”. However, the owners framed the basement up for a bathroom and bedroom to be finished in the future.

Bont said the big issue appears to be the number of bedrooms.

Bont said it is hard to cheat on the number of kitchens because there is usually only one (1) kitchen per house and the Town charges one (1) fee for a kitchen, whether the kitchen is small and basic or enormous with multiple water-using appliances spread throughout an open concept area. Bont said the Town may catch up with the number of bathrooms eventually if the house gets sold or the owners let the appraisers in to inspect.

Bont gave an example of a surveyor who was performing a mortgage inspection on Black Mountain Road. The appraiser inspected the home, which is in the Mountain Residential (MR) District, where there are twenty-five foot (25’) required setbacks for front, rear and side. He measured and learned that the house was within ten feet (10’) of the boundary line. (They need a variance.)

Bont said that a second issue arose because there was an additional unpermitted bathroom. The first application indicated that they had been permitted for three (3) bathrooms and four (4) bedrooms. When a second application for a Land Use Permit came in for four (4) additions, the application stated that no changes to the number of bathrooms or bedrooms were made. The second application said that they had four (4) bathrooms and four (4) bedrooms. There was no indication in the files that they had paid the additional water and sewer tap fees for the fourth bathroom.

Bont said that recently they went to inspect another new house where the plans called one large room labelled a “storage room”. However, when they went into the house to do the inspection and came to the “storage room” there were six (6) beautiful, full size, built-in bunkbeds in that room. Then the contractor said, “but it has no closets”. The property owners did not want the “storage room” with bunkbeds to count as a “bedroom”.

Bont gave another recent example, they inspected a new house that had no closets in any of the six (6) bedroom- sized rooms except for the master bedroom which had an enormous walk-in closet. There was enough room in each of these bedroom-sized rooms with lockable doors to put in closets or enormous wardrobes after the inspection. However, the owners argued that one room was an “exercise room”, one was a “library”, one was a “study” or a “game room”.

Bont said sometimes before they get a chance to inspect the new house the owners ask if they can move some furniture in. Bont thought that perhaps she should always say, “yes” because later when they go in to inspect the house, they can see all of the beds lined up in the “gymnasium” or the “library” or the “storage room”. Water & Sewer Tap Fees and Bedroom Impact Fees is how the Town pays for upgrading or expanding its infrastructure and the Town should be able to charge for each item.

Town Manager/Planner Burbank said that when the Town performs an inspection prior to issuing a Land Use Compliance Certificate, that “is the only shot we get” to learn what is there. The property owners do not have to let Town assessors into their homes unless they want to appeal their assessments. Otherwise, unless the house sells, there is no way to tell if people added bedrooms or bathrooms. Water & Sewer Tap Fees and Bedroom Impact Fees do add up. Property owners and their contractors treat this process like a game.

Bont said that she would find it helpful if the Planning Board could define “bedroom”. Otherwise, there are those who argue that if there is no closet, it is not a bedroom. They make up names for the rooms. The plans are helpful, but by the time the house is complete there have been many changes made to the plans.

Chair Spanos said that he cannot believe people would build a room without a closet to save \$500. Bont said that the person with no closets in the bedrooms had other similar issues. When Bont talked to the contractor, he said that the owner was driving him crazy because she was nickel-and-diming him on everything. This owner has no closets except for the enormous walk-in closet in the master bedroom. Bont said that the rooms were built large enough to add closets or large wardrobes later.

Town Manager/Planner Burbank said that first the property owners pay water & sewer tap fees and bedroom impact fees upfront for what they claimed on their Land Use Permit Application. Then later the property owners pay additional fees for additional water and sewer taps or

bedrooms they actually installed by the time of the inspection because they want to obtain a Land Use Compliance Certificate. That is the Town's last real chance to catch these fees.

Robinson said, "Let's work it backwards. We can't go back into the house in three (3) years and see what they are using it for. We will do it the other way. We can say, "this could be used as a bedroom, and we are charging a bedroom tax. If you want to invite us back three (3) years from the date of the Land Use Compliance Certificate and show us the room is not being used as a bedroom, we will rebate you the money."

Fire Chief Beard said that the Town should not set a date specific, but at its leisure. They could come back and inspect the house within a three (3) year period.

Chair Spanos said that the property owner would not let us in. Bont agreed. Bont said that even for assessing the property, the property owner does not have to let the Town in. However, if they do not let the assessor in, they cannot appeal their property assessment. Bont gave an example of the houses in Newport, Rhode Island. Several years ago, the assessors who worked for VISION Property Appraisal Company who did the property assessments for Newport, Rhode Island, were never allowed into those houses along the ocean. They had to perform the assessments from outside by guessing what was inside. The owners surmised that if they let the assessors in, their assessments and their property taxes would go up.

Town Manager/Planner Burbank said that the assessors would depend on recent sale prices in the area to determine the assessment on a house.

Hettinger said that when the assessor came through his house after remodeling, the assessor went through the whole house. He wanted to see the plans and went through all floors.

Bont said that if you have problems with your house that you may wish to point out to your assessor to get him to reduce the value of your assessment it is generally to your advantage to let the assessor in.

Town Manager/Planner Burbank asked if there was a stock definition of a "bedroom".

Fire Chief Beard said that if the application for a new home says the house has three (3) bedrooms and when we go to inspect it, if there was any deviation of the plan that was unreported during the construction phase, we could assume that any additional rooms are bedrooms.

Bont said to look at the house from a realtor's perspective. If you were a realtor and you are asked to list this house are you going to advertise the house as a five or a six bedroom house? The property owners hire a realtor to sell the house for them. What is the realtor going to say in the advertisement when he lists the house for sale? How many bedrooms does the house have?

Chair Spanos said that as a realtor he looks at the tax card and tries not to deviate from what the tax card says. If the tax card says there are two (2) bedrooms and there are three (3) in the house when we look at it, we say, it is a two (2) bedroom house with the potential for three (3)."

Chair Spanos gave an example of a home that he was selling that had three (3) bedrooms. The appraiser, however, said that there was no closet in the third bedroom so he called it a "den". There is only a \$500 fee for a bedroom. If you go online, there are probably 1,000 definitions for a "bedroom". Modern houses have closets in the bedrooms. Older houses did not necessarily have closets. The definition of a bedroom is highly subjective.

Fire Chief Beard said that the number of bedrooms, and therefore, the anticipated number of occupants in the house does impact the amount of water used and the sewer system.

Robinson said that the Town is in a position where town staff does not have to be lenient and cave to the homeowner saying, “this is a den” or “this is an exercise room”. If the room looks like a bedroom, it is a bedroom. Invite us back in three (3) years.

There was a brief discussion about how to tell bedrooms from other types of rooms that are not bedrooms.

Bont said that if you look at the last couple of Land Use Compliance Certificates that were issued, Bont wrote right on the Certificate that “if the room called a ‘study’ has any beds or any pull out couches in it, you will owe bedroom impact fees”.

Fire Chief Beard said that you have to look at the walls carefully too because a large number of walls turn out to have Murphy beds.

There was a long discussion about houses in town that have unpermitted bedrooms that homeowners never told the Town about.

Fire Chief Beard explained that during inspections the homeowners or contractors try to herd them through a certain way, but Fire Chief Beard will go in one direction, Public Works Director Hadaway will go in another direction and Bont in a third.

Bont said that as far as the Master Plan goes, she is waiting for Karen Fitzgerald to make the changes to one chapter and send back to Bont. They can sign the final Master Plan at the next meeting.

- V. 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.

VI. ADJOURNMENT

Motion to adjourn at 7:50 PM

Motion: John Hettinger Second: OJ Robinson All in favor.

Respectfully submitted,

Wendy Tanner,
Planning and Zoning Recorder

Date Approved: 12/14/16


James Spanos, Chairman