

**LINCOLN PLANNING BOARD  
REGULAR MEETING MINUTES  
WEDNESDAY, APRIL 11, 2018 – 6:00PM  
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

**APPROVED**

**Present:** Chair Jim Spanos, Vice-Chair Joe Chenard, Mark Ehrman, Selectmen's Representative OJ Robinson, Normand Belanger (alternate) and Callum Grant (alternate).

**Members Excused:** Patrick Romprey

**Members Absent:** None

**Staff Present:** Town Planner Carole Bont, and Ellyn Gibbs Franklin, Recorder, Fire Chief/Code Enforcement Officer Ron Beard.

**Staff Excused:** None

**Guests:**

- **Ronald R. (Ron) Beard** – (*sat in the audience*) resident and property owner with Fonda M. Beard of 27 Hanson Farm Road, Lincoln, NH 03251 (Map 106, Lot 013), and Fire Chief, Forest Fire Warden, Code Enforcement Officer and Health Officer.
- **Paul J. Beaudin II** – resident and property owner with Kathryn J. Beaudin of 2 Louis Lane, Lincoln, NH 03251 (Map 117, Lot 069), and Louis Lane (Road) (Map 117, Lot 069001-00-00000), PO Box 872, Lincoln, NH 03251-0872 and member of Zoning Board of Adjustment.
- **Susanne (Susan) A. Chenard**, resident, 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).
- **Tamra Ham**, resident, 98 US Route 3, Lincoln, NH 03251 (Map 109, Lot 002), and Selectman.
- **Michael J. Hyland**, nonresident, 26 Profile Lane, North Woodstock, NH 03262, Manager of Merland Group LLC. Merland Group LLC owns the property with an address of 437 US Route 3, (Map 105, Lot 022) and 25 Main Street, (Map 112, Lot 024), with a mailing address of PO Box 5, Lincoln, NH 03251-0005, owner of White Mountain Bagel Co., at 25 Main Street, and White Mountain Bagel North at 437 US Route 3.

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

*Chair Spanos called the meeting to order at 6:00 pm.*

*Patrick Romprey was excused.*

*Callum Grant was seated.*

- II. CONSIDERATION** of meeting minutes from:

- February 14, 2018 (OJ Robinson, Callum Grant & James Spanos)

**Motion to approve the minutes of February 14, 2018 as amended.**

**Motion:** Robinson

**Second:** Grant

**All in favor:** 3-0

- March 28, 2018

Name changes on lines 165 and 169, Attorney Ray D'Amante to Town Engineer Ray Korber.

Line 326 – “How much square footage was need for each condo” versus “lot”.

Line 330 – The original density for the “lot” should be the original density for the “hotel.”

**Motion approve the minutes of March 28, 2018 as amended.**

**Motion: Robinson**

**Second: Ehrman**

**All in favor: 5-0**

Callum Grant abstained.

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

#### **Apology:**

Vice-Chair Chenard said that at the last meeting he attended, he made a comment that was “totally inappropriate.” Chenard said, “If I offended anyone by what I said or the way I said it, I really apologize.”

- A. Conceptual by Michael Hyland, Manager of Merland Group LLC. Merland Group LLC owns the property with an address of 437 US Route 3, (Map 105, Lot 022) PO Box 5, Lincoln, NH 03251-0005, for a change of use to change the existing single business use of the property into a mixed business use property. The property is located in the General Use (GU) District.**

Chair Spanos said that member Patrick Romprey recused himself from the hearing as he is related to someone involved in the proposed project.

Hyland said he will continue to run the White Mountain Bagel Shop North, as is, but he would like to use the building to the north end of the property that has a garage with an attached shed for another business. On the last survey done on the property, there is something at the end of the building labeled “porch,” which was not even there when he purchased the property. That porch is gone.

Planner Bont said Hyland is coming for a Conceptual review. He is coming for a Site Plan Review approval. He is going to be requesting a waiver from the survey and survey-related requirements under the Site Plan Review Application Checklist. If he needs to bring the Planning Board survey information for the Site Plan Review hearing then he will need to come back later with more information and we will have to continue his upcoming Site Plan Review Hearing. At this time Bont has set Hyland up for a Site Plan Review hearing, but he is coming for a Conceptual tonight so he can ask the Planning Board a few questions about it.

Hyland said, his intent is to rent two wheeled vehicles out of that garage – mountain bikes, e-bikes, and e-fat bikes. Hyland’s original idea was to rent out 49cc scooters, but Hyland said he is eliminating the idea of 49cc scooter rentals due to insurance issues and safety.

*[Note: An “e-bike” is a bicycle that can be run on electric power as well as by pedaling. It is also known as a “booster bike a power bike or an e-bike.”]*

Hyland said he still wants to have a mixed use property, but he wants to change the device in there to “e-bikes”. Hyland said he wants to utilize the fact that he is close to the Franconia Notch

State Park Recreational Trail a/k/a “Franconia Notch Bike Path” and focus on that. The White Mountain Bagel Shop North is not open in wintertime, so he is trying to maximize the four to five (4-5) months he is open. Hyland said that for e-bikes, he can create a loop that others could not, because people could ride right up Cannon and come back instead of needing to be hauled up to Cannon. Hyland said he feels like the garage and shed would give him enough square footage to operate with 12-15 units.

Chair Spanos asked Hyland if his proposed e-bike rental business would be open different hours from the restaurant. Hyland said yes, the rental business would be open probably something like 9:00 am – 5:00 pm. The White Mountain Bagel North shop is open from 6:30 am – 2:00 pm on weekdays and from 6:30 am – 3:00 pm on weekends.

Planner Bont said one of the reasons Hyland is coming before the Planning Board for a Conceptual is that normally if someone is coming in for Site Plan Review approval would be required to have a Site Plan prepared by a surveyor to be recorded. Hyland is lucky enough to have a survey of the property prepared in 2005, when Maria Smith and Maria Maderos subdivided the business portion of the property from the residential portion of the property. On the survey you can already see where the pre-existing buildings are located on the lot. Hyland will be utilizing these pre-existing buildings.

Planner Bont said that Hyland does have one problem, like everyone along that stretch of US Route 3. His building comes right up to the boundary line on US Route 3. Furthermore, Hyland’s buildings are fully in the front and side setback areas. Planner Bont pointed out that although it looks like there is plenty of room in front of the bagel shop and garage for parking, additional parking spaces cannot actually go in the front because that area in front is part of the State land and the State right of way for US Route 3. Hyland does have State permission to keep his White Mountain Bagel Shop sign there on the State land and within the State Right-of-Way. Hyland is before the Planning Board because he wanted input from the Planning Board about whether he could avoid having to hire a surveyor to prepare a site plan for this project. The survey shows where the possible parking spaces are.

Vice-Chair Chenard said that the buildings (i.e., the restaurant building and garage with shed) were put in before the zoning ordinances was established so it is grandfathered in.

Chair Spanos said that Hyland could ask for a waiver of that survey requirement.

Hyland said as for the parking spots, in the town ordinance paperwork, it says there is one spot per four (4) seats in the restaurant. He has twenty-eight (28) seats in the restaurant which means he would need to make seven (7) parking spaces for the restaurant. The porch on the end of the garage with shed is gone, so that creates another location for a parking spaces. From the actual paperwork, it looks like seven (7) would be the proper number of parking spaces for the restaurant, so that gives him between six to seven (6-7) parking spaces for the rental operation.

Planner Bont said the zoning ordinance (Land Use Plan Ordinance) requires one (1) parking space for every three hundred square feet (300 sf) of public space. Rental would be most likely characterized as a “retail, consumer service” business.

Chair Spanos asked Hyland how many bikes he would plan to rent out. Hyland said he would probably rent between twelve and fifteen (12—15) e-bikes. Chair Spanos said that sounded like a good number.

Robinson said the Planning Board has accepted older survey plans for other projects in the past,

without that being a problem. He thinks that notifying us about the updates on the survey (like the porch) is sufficient. There are also other spots along US Route 3 where customers for businesses park in the State right of way, such as Woodward's Resort and Inn, [527 US Route 3, Lincoln, NH 03251 (Map 104, Lot 001) owned by Bentley White Mountain Real Estate, PO Box 71, East Kingston, NH 03827].

Hyland said when he initially spoke with the State [*New Hampshire Department of Transportation's Bureau of Traffic*] about the sign, they said they would not give approval for the parking, but that they would not be policing it either.

Vice-Chair Chenard said the width of the State right of way along US Route 3 is one hundred feet (100') instead of the usual width of fifty feet (50 ft.) because that is initially where the interstate was going to go. The State changed its plans after the State purchased the one hundred foot (100') right of way. Consequently, now the State NH DOT is not too stringent about the State right of way issue in this location because the problem is so widespread along Route 3.

Hyland asked if his request to add a second business to the property was approved by the Planning Board and later in the future he decided to just change the use of his property from two business uses to a single business use permit, do he have to come back before the Planning Board to make that change? For instance, if he ever chose to close the bagel shop, and go to only renting and selling bikes.

Vice-Chair Chenard said he would need to apply for a waiver of Site Plan Review approval if he wanted to go to a single use. Planner Bont said it would still depend on what he wanted to do.

Robinson asked whether the use goes with the property or a building. Members of the Planning Board said the use would go with the property.

Planner Bont said that the "restaurant use" is a separate category of business use, different from a business use called "retail or a consumer service". Robinson said if Hyland's use is retail, if he changes that on the same property, doesn't the approved use stay with the property? Planner Bont replied that Hyland's issue would arise because he would be going from between three hundred and four hundred square feet (300-400 sf) of retail space to three thousand square feet (3,000 sf) of retail space in two (2) separate buildings. Bont said Hyland could ask for waivers for different parts of the application checklist to make the process easier, but he would still need Site Plan Review approval.

*[Note: the garage is 400 square feet. The shed is 320 square feet. The restaurant building has 2,133 square feet of living area.]*

Planner Bont read from the Site Plan Review Regulations, under the definition of development: "CHANGE OR EXPANSION OF USE" section and "a-f."

**DEVELOPMENT:** The construction or improvements on a tract or tracts of land for nonresidential use or use for multi-family units other than one and two family dwellings. For purposes of these regulations the word “development” includes a “change or expansion of use” as defined below.

**CHANGE OR EXPANSION OF USE:**

- (a) The conversion of any lot, parcel or building, or portion thereof, from a residential use to a nonresidential or multi-family use;
- (b) The addition of more than 500 square feet of floor area or other impermeable surface to an existing nonresidential or multi-family use;
- (c) The addition of less than 500 square feet of floor area or other impermeable surface to an existing nonresidential or multi-family use, if constructed within 3 years of any prior construction on the same lot or parcel;
- (d) A change of use from one category of permitted or special exception use, as listed in the land use schedule of Article VI of the Lincoln Land Use Plan Ordinance, to another such category of listed use, regardless of whether the change involves construction;
- (e) Any material change to a previously-approved site plan, or series of changes over a 3-year period resulting cumulatively in a material change, as determined by the Planning Board Chair and Town Planner; and
- (f) Any material change to a development that pre-existed prior to the adoption of Site Plan Review Regulations, or a series of changes over a 3-year period resulting cumulatively in a material change, as determined by the Planning Board Chair and Town Planner.

The Planning Board determined that Hyland should just come back to see the Board if he has an idea about changing the use.

**B. Review of Planning Board By-Laws to see if any changes need to be made.**

The Planning Board looked at the current Town of Lincoln Rules of Procedure, as is, and compared them to the “Suggested Rules of Procedure” from the Planning Board Handbook (authored by NH OIS/OEP and supplied by Planner Bont). Bont highlighted the items to discuss and possibly change.

**1. Members and Alternates**

**a. Paragraph #1:** Currently reads:

The Planning Board shall consist of five (5) members appointed by the Selectmen. One of the four (4) members shall be a Selectman, designated by the Board of Selectman as an ex-officio member with the power to vote.

**ACTION PARAGRAPH #1:** Changed to read:

The Planning Board shall consist of five (5) members. One of the four (4) members shall be a Selectman, designated by the Board of Selectman as an ex-officio member with the power to vote. The remaining four (4) shall be elected on a staggered basis according to the provision of RSA 673:2ii(b)(2).

**b. Paragraph #2:** No questions.

c. **Paragraph #3:** No questions.

d. **Paragraph #4:** Currently reads:

Up to four (4) alternate members may be appointed, as provided for by the local legislative body, and should attend all meetings to familiarize themselves with the workings of the board to stand ready to serve whenever a regular member of the board is unable to fulfill his/her responsibilities.

**ACTION PARAGRAPH #4:** Changed to read:

Up to three (3) alternate members may be appointed, as provided for by the local legislative body, and should attend all meetings to familiarize themselves with the workings of the board to stand ready to serve whenever a regular member of the board is unable to fulfill his/her responsibilities.

e. **Paragraph #5:** Currently reads:

At planning board meetings, alternates who are not activated to fill the seat of an absent or recued member or who have not been appointed by the chair to temporarily fill the unexpired term of a vacancy may participate with the board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, and actively participate and interact with other board members, the applicant, abutters and the public. Upon the close of the public hearing, alternates must remove themselves from the table and sit with other members of the public unless they are sitting in place of another member. During work sessions or portions of meetings that do not include a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made. At all times, the chair shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.

**Discussion re: Paragraph #5:**

Chair Spanos said the Planning Board has never required the alternates to sit in the audience. This particular process was suggested in the Planning Board Handbook's "Suggested Rules of Procedure". Planner Bont said if the Planning Board is not going to have the alternates step away from the table they would need to make it clear to the applicant presenting who is an alternate who has been seated and will be voting on a case and who is not. Robinson said he thinks the alternates still add to the discussion even if they cannot vote. He would like to strike it. The rest of the Board agreed.

**ACTION PARAGRAPH #5:** Changed to read:

At planning board meetings, alternates who are not activated to fill the seat of an absent or recued member or who have not been appointed by the chair to temporarily fill the unexpired term of a vacancy may participate with the board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, and actively participate and interact with other board members, the applicant, abutters and the public. ~~Upon the close of the public hearing, alternates must remove themselves from the table and sit~~

~~with other members of the public unless they are sitting in place of another member.~~  
During work sessions or portions of meetings that do not include a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made. At all times, the chair shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.

**f. Paragraph #6:** Currently reads:

Members must reside in the community and are expected to attend each meeting of the board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the chairman as soon as possible. Members, including the chairman and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.

**Discussion re: Paragraph #6:**

Chair Spanos said the Chairman and the alternates usually participate in the decision making process, however, in case of a tie he would recuse himself. Vice-Chair Chenard said Chair Spanos has the right to vote and break a tie if he desires. Robinson said he thinks it is important to leave it clear that the Chair has the right to vote at all times.

**ACTION PARAGRAPH #6:** No change.

**g. Paragraph #7:** No change.

**h. Paragraph #8:** Currently reads:

The Secretary shall forward to the municipal clerk for recording the appointment/ election and expiration dates of the terms of each member of the Board.

**Discussion re: Paragraph #8:**

The Board discussed whether they should keep the “Secretary” designation of a member. There are five (5) members, and four (4) have titles. Robinson suggested using the phrase “clerk or designee” in place of “Secretary.” Currently there is no Secretary – the last one was John Hettinger who is no longer on the Planning Board.

Belanger said he thinks there is a shortage of manpower.

Planner Bont recommended sending a revised version of the Rules of Procedure to Town Attorney Peter Malia for legal review when the Planning Board has completed the proposed changes and he can let us know if the role of Secretary is necessary or if the staff can fulfill those obligations. Grant said he believes that a “Secretary” is a necessary officer even if the planning staff carries out the tasks. Chair Spanos is unsure how many officers the Planning Board needs. The Planning Board decided to scratch out the Secretary position unless Malia says it is required.

Ehrman said the Planning Board members should clearly designate whatever tasks they want the Secretary to do. Ehrman said the Planning Board members are using the term “secretary” ambiguously, as far as some people are referring to the transcription aspect of the position whereas others are referring to the executive power of a “secretary”.

Ehrman said the transcription of the minutes is absolutely necessary to avoid litigation, but the executive power of the secretary may not be necessary. When you send back the revised notes to consider, it should be clear what use of “Secretary” you are talking about. He believes a Secretary is necessary and it is not a hierarchical issue at all – anyone can be an officer.

Robinson said we will probably be safer and avoid legal costs if we just put in the words “secretary or designee.” Corporately, you have to have two offices: president and secretary. However, Robinson is unsure how that role of “secretary” functions for a Town board.

Ehrman said he believes the Planning Board should minimize the chance of litigation. There are two issues when you get exposed: Was the process fair? and Did you have a just outcome? You cannot judge the process unless you have accurate minutes.

Chair Spanos said if this paragraph goes away, we will still have accurate minutes.

The Board decided to use the phrase “secretary or designee.”

**ACTION PARAGRAPH #8:** Changed to read:

The Secretary *or designee* shall forward to the municipal clerk for recording the appointment/election and expiration dates of the terms of each member of the Board.

## 2. **Officers:**

### a. **Paragraph #1:** Currently reads:

1. The officers of the Board shall be as follows:
  - a. Chairman: The Chairman shall preside over all meetings and hearings; shall prepare, with the assistance of the Secretary, an annual report; and shall perform other duties customary to the office.
  - b. Vice-Chairman: The Vice-Chairman shall preside in the absence of the Chairman and shall have the full powers of the Chairman on matters that come before the Board in the absence of the Chairman.
  - c. Secretary: The Secretary shall keep a full and accurate record of the proceedings of each meeting; issue notices of all meetings; record the names of the members present; notify applicants and abutters of hearings; and prepare such correspondence and fulfill such duties as the Chairman may specify. In the absence of the Secretary, the Chairman shall appoint a secretary *pro tem* to keep records of the meeting.

**ACTION PARAGRAPH #1:** Changed to read:

1. The officers of the Board shall be as follows:
  - a. Chairman: The Chairman shall preside over all meetings and hearings; shall prepare, with the assistance of the Secretary or designee, an annual report; and shall perform other duties customary to the office.
  - b. Vice-Chairman: The Vice-Chairman shall preside in the absence of the Chairman and shall have the full powers of the Chairman on matters that come before the Board in the absence of the Chairman.
  - c. Secretary or designee: The Secretary or designee shall keep a full and accurate record of

the proceedings of each meeting; issue notices of all meetings; record the names of the members present; notify applicants and abutters of hearings; and prepare such correspondence and fulfill such duties as the Chairman may specify. In the absence of the Secretary or designee, the Chairman shall appoint a secretary *pro tem* to keep records of the meeting.

b. **Paragraph #2:** Currently reads:

The officers of the Board shall be elected annually during the month of April by a majority vote of the Board. If requested by a majority of those present, voting shall be by written ballot.

**ACTION PARAGRAPH #1:** Changed to read:

The officers of the Board shall be elected annually during the month of March by a majority vote of the Board. If requested by a majority of those present, voting shall be by written ballot.

3. **Meetings**

a. **Paragraph #5:** Currently reads:

If any regular Board member is absent from a meeting or hearing or disqualifies her/himself from sitting on a particular application, the Chairman shall designate one of the alternate members to sit in place of the absent or disqualified member. Such alternate shall have all the powers and duties of a regular member in regards to any matter under consideration on which the regular member is unable to act. The alternate should continue until the matter is completed; the regular member does not vote on that matter.

**Discussion re: Paragraph #5:**

Planner Bont said since she has been working for Lincoln it has been very rare for any matter to go on for multiple meetings. Vice-Chair Chenard said sometimes in the past the Planning Board has gone for five (5) consecutive meetings to address an application.

**ACTION PARAGRAPH #5:** No change.

- b. **Paragraph #6:** No change.
- c. **Paragraph #7:** No change. (Taken out of state statute verbatim.)
- d. **Paragraph #8** – Pretty much going to follow as written.
- e. **Paragraph #9 – Currently reads:**

A motion, duly seconded, shall be carried by an affirmative vote of a majority of the members present. Voting shall be by roll call which shall be recorded in the minutes, if requested.

**Discussion re: Paragraph #9:**

Vice-Chair Chenard noted that 9.1 states the reason for a secretary and says that person cannot take the minutes.

**ACTION PARAGRAPH #9:** No change.

**4. Applications for Subdivision and Site Plan Review****a. Paragraph #1** Currently reads:

1. Applications for hearings before the Board shall be made on forms provided by the Board and shall be presented to the Secretary of the Board or the Board's agent who shall sign and record the date of receipt.

**Discussion re: Paragraph #1:**

Robinson said there is nothing in the State guidelines (i.e., Planning Board Handbook's "Suggested Rules of Procedure") about a "Preliminary Review". Chair Spanos said a "Conceptual Review" is in the town zoning ordinance (Land Use Plan Ordinance). Robinson said a "Conceptual Review" is not in the Planning Board's Rules of Procedure, but he is unsure about whether the Planning Board needs it.

Robinson and Chair Spanos said they believe the Planning Board should make clear that the applicant must deliver the application to the business agent at town hall during normal business hours. They also wanted to cross out the words "secretary of the board."

**ACTION PARAGRAPH #1:** Changed to read:

Applications for hearings before the Board shall be made on forms provided by the Board and shall be presented to the ~~Secretary of the Board or the~~ Board's agent *at town hall during normal business hours*, who shall sign and record the date of receipt.

**b. Paragraphs #2-#4:** No change.**5. Forms:** No change.

6. **Notice:** Robinson asked if we need to mention that the public notices also will be on our website, and Planner Bont agreed. They will possibly create a third paragraph (#3) for this section, but Planner Bont will look at the statute about it first.

**7. Public Hearings:****a. Paragraph #1:** Currently reads:

1. The Chairman shall call the hearing in session, identify the applicant or agent and ask for the Secretary's report on the proposal.

**b. Paragraph #2:** Currently reads:

2. The Secretary or agent shall read the application and report on the manner in which public and personal notice was given.

**Discussion re: Paragraphs #1 and #2:**

Chair Spanos said that usually the staff (Planner Bont) reads a report before the hearing, not the Secretary. The Planning Board decided to replace the word "Secretary" with "board agent."

**ACTION PARAGRAPH #2:** Changed to read:

1. The Chairman shall call the hearing in session, identify the applicant or agent and ask for the ~~Secretary's~~ *board agent's* report on the proposal.
2. The ~~Secretary or~~ *board agent* shall read the application and report on the manner in which public and personal notice was given.

c. **Paragraphs #3-#11:** No changes.

8. **Decisions 1-3:** No changes.

9. **Reconsideration:** No changes.

**10. Records:**

a. **Paragraph #1:** Currently reads:

The records of the Board shall be kept by the Secretary or agent and shall be made available for public inspection at the Office of the Town Clerk as required by RSA 91-A:4.

**ACTION PARAGRAPH #1:** Changed to read:

The records of the Board shall be kept by the ~~Secretary or~~ *board agent* and shall be made available for public inspection at the Office of the Town Clerk as required by RSA 91-A:4.

b. **Paragraph #3:** Currently reads:

3. If an electronic record of the meeting is created using publicly-owned equipment they are “government records” under the Right to Know Law and subject to disclosure unless they are exempted from disclosure under some provision of the law. Under the Municipal Records Law RSA 33-A:3-a, LXXX schedule these electronic recordings shall be kept until written record of the meeting is approved at a Planning Board meeting. As soon as the minutes are approved, the electronic record shall be disposed of. Under RSA 91-A:4, III-b of The Right To Know Law an electronic record is no longer subject to disclosure after it has been initially and legally deleted.

**Discussion re: Paragraph #3:**

Chair Spanos noted that “electronic records” is highlighted. Planner Bont explained that she saw in the Planning Board Handbook that some towns dispose of the recordings of the meetings right away as soon as the meeting minutes are approved. Chair Spanos said if we keep the recordings, we should keep them for all the meetings, not pick and choose which meetings to keep the recordings for. Robinson asked if we have a live stream, we still must provide written minutes, so will we destroy the recordings as soon as we approve the minutes? Robinson said he does not see a problem with archiving the recordings for a minimum of 12 months. If there is a controversy with one you can keep it for longer. Planner Bont said that should probably be a broader discussion with the Board of Selectmen, so we can keep it consistent among the various town committees and board, like the Planning Board, the ZBA and the Board of Selectmen.

## 11. Joint Meetings and Hearings

### Discussion re: Joint Meetings & Hearings:

Vice-Chair Chenard said in years past it was mandatory for the Planning Board and the Zoning Board of Adjustment (ZBA) to meet for a discussion session and to compare notes. Robinson said it is clear that a joint meeting is not mandatory in the current Planning Board Rules of Procedure. Chair Spanos and Robinson said they do not want to make it mandatory to meet with the ZBA. Chair Spanos said that in the sixteen (16) years he has been on the Planning Board, he has participated in only one joint meeting. Planner Bont said that she talked with staff at the New Hampshire Office of Strategic Initiatives (OSI formerly OEP) about the pros and cons of joint meetings. They said that joint meetings sounds great in theory but often do not work so well in real life. It is practical for Towns that have Planning Board and ZBA members who get along. Joint meetings are practical for a number of reasons. For example, when someone needs a variance or special exception AND Site Plan Review approval. The applicant might want the same expensive expert witnesses to testify at both hearings when they will be testifying about the same matters at both hearings. A joint meeting would let the applicant avoid paying an attorney or an expert to make two trips and testify about the same matters twice.

**ACTION JOINT MEETINGS & HEARINGS:** No changes.

## 12. Amendment

a. Paragraph #1: Currently reads as follows:

1. The Board's rules of procedure may be amended by a majority vote of its members at a regular meeting of the Board as provided in **RSA 676:1**. The amended rules of procedure shall be filed with the Town Clerk.

### Discussion re: Amendment

Planner Bont said she highlighted this section only to remind the Planning Board that they have to do it by majority vote. Planner Bont will apply the changes with text tracking, and send that out to the Board. She will have the Board look at it before sending it to Peter Malia.

## C. Discussion re: Setting up a Meeting to Discuss Town's procedure for asking for or handling Homeowners Associations and Condominium Associations approvals prior to issuing Land Use Authorization Permits.

Robinson asked Planner Bont why she even thought that the Planning Board should hold a meeting about this question.

Planner Bont explained that she, Town Manager Burbank and Fire Chief Beard have had lots of discussions with various homeowners' associations (HOA) and condominium associations about the symbiotic relationship between the Town and the many private associations. When Bont and Burbank started working for the Town of Lincoln, initially it was a chicken-and-egg issue. Should the Town issue a Land Use Authorization Permit first, or should the Homeowners Association approval process go first? Typically, the Association approvals went first and the Town went second.

Planner Bont explained that staff also discussed this matter on a number of occasions with the Town Attorney and the Town Engineer. The consensus was that maybe we should have a full discussion with the people in favor and against before deciding what to do going forward. They suggested that the Town could invite the officers from the HOAs to come, and we would welcome their input. We would also invite the developers. The point of this meeting would be “fact finding” and gaining insight and gathering input. There are also “declarant periods” that Town staff does not really understand, so this exercise also might be educational for us.

Planner Bont said she talked to a few different communities, who have addressed the Association approvals a number of different ways. Some communities ask for the association’s approval as part of their application process spelled out in their ordinance. Other towns had the question about HOA approval just on their application but not in their ordinance.

Vice-Chair Chenard said the Town cannot give permission to a property owner to do what the HOA does not allow.

Ehrman said that “there was a time when all this was subject to review and change”. That change is no longer practical. If you were making a zoo out of the Homeowners Associations in the Town of Lincoln “you’d have a Noah’s ark.” The HOAs are all different. Some are tightly run, others are more relaxed. Some HOAs have officers who are very involved, others are not. For the Town to get involved in enforcement – if you are going to require a Town to pass judgment and get HOA approval, the Town is inviting endless discussion at the best; at the worst, much worse. Ehrman said he thinks the Town has or needs guidelines of its own about buildings and uses and should only apply its own guidelines. If an HOA is operated properly then the HOA officers can enforce the HOA’s own regulations.

Ehrman said the Town can state on the Town Land Use Authorization Permit that this permit does not constitute approval by any association. Ehrman said the Town can disclaim any authorization. “But still, it is like watching two mastiffs fight on the street: you might have a position on who gets the bone but you might not want to stick your arm in there.” Ehrman said that some of these associations even have rules directly opposite to the laws of the State of NH.

Robinson said at the public hearing for proposed Amendments to the Land Use Plan Ordinance this past winter (January 10, 2018), he “heard enough testimony to scare me into approving something based on homeowners’ associations; that does invite litigation.” The Town has many different kinds of homeowner associations (HOAs) and condominium associations. Some HOAs have Architectural Review Boards (ARBs), some HOAs have junior associations and a master association. Robinson said that his thought is that for any application for a project that is within a master plan or an association:

- (1) We make sure that they get notified about what is happening in the subdivision before the Planning Board, and
- (2) Once the Planning Board gives approval, a copy of that approval goes to the HOA so they know what we approved.

Planner Bont said at this point, we do not send the HOAs or the Condominium Associations or any abutters copies of approval of anything. Once the Site Plan Review Approvals and the

Subdivision Approvals have been granted, there is no legal reason to notify either abutters or the Associations of anything – certainly not every single application for a Land Use Authorization Permit.

Robinson said if the Town is going to get rid of the HOA approval up front, let us figure out how to keep the HOAs in the loop about anything the Town approves. From there, the HOAs can decide whether the project issued the Land Use Authorization Permit (LUP) fits in with their HOA rules and address their member homeowner if needed. Land Use Authorization Permits are public information.

Planner Bont said there are a lot of problems with our HOAs occur because many of these developments were developed either right before the Town zoning ordinance was adopted or right after zoning took effect in 1986. For example, most of these developments had to get State NH DES Alteration of Terrain (AoT) Permits, as part of their process. This all took place early on when DES first started approving Alteration of Terrain Applications. At that time all NH DES cared about was whether the roads were going to stay in place. The engineering was all about the roadways. The engineering that NH Department of Environmental Services (DES) initially approved did not take into consideration any of the buildings or paved surfaces or any other impervious surfaces other than the roads that were planned to be developed by these associations. All of the engineering both submitted and approved only had to do with the roads. The current problems are created by the failure of the engineer to address any of the buildings or impervious surfaces that became part of the development. Part of my concern is that the staff is trying to do the best we can for the Town's approved developments with the inadequate information the State and Town had when these developments were approved and started. Planner Bont said she sees the HOAs as allies, and wants to keep them working with the Town and to help us get people to construct safe retaining walls and to get their storm water runoff managed and under control so nobody downhill of the new homes dies.

Ehrman said this is in the power of the Town itself. Planner Bont said yes, but simultaneously, the HOAs are giving us feedback and asking why people are getting permits for certain things.

Ehrman said you are putting yourself in front of a collective made up of developers and different boards run different ways, both properly and improperly constituted. He thinks you are entering into a dangerous place.

Planner Bont said it was the Town Attorney Peter Malia's and Town Manager Butch Burbank's idea that we hold a meeting with the Planning Board and the ZBA to gather input and information from these other parties. We had a group of developers come to the January 10, 2018, public hearing and give us one perspective. Afterwards Harry Schofield who is President of the Forest Ridge Homeowners' Association had a different perspective. Coolidge Falls HOA may have its own unique perspective.

Robinson said the Coolidge Falls issue was about approving or not approving retaining walls and water mitigation on common land. Planner Bont said based on the representations made at the hearing with Hamilton and Miller, supposedly Coolidge Falls HOA have taken care of this problem of assigning legal responsibility for retaining walls on common land and stormwater management on common land with their recent amendments to their Declaration, Covenants and Restrictions.

Robinson said the Town has no authority over what the HOAs do, but if he wants to build a house in his envelope, but he needs a retaining wall out in the common area, that should be done on a separate permit. Planner Bont said, in that case what the lot owner submitted was a legal document that showed us he is taking legal responsibility for that wall, and whomever owns that house lot from now on also owns that wall. Robinson said that the property owner has involved the HOA and the HOA was fully aware that the property owner was coming before the Planning Board. This change in the HOA documents has relieved the Town of liability, but has certainly integrally involved the HOA to the point of satisfaction.

Chair Spanos said the Town cannot give permits to PUD owners to build things on other people's land (i.e., the common land). Planner Bont said yes, that is true, however, now we only have a solution for one particular development – Coolidge Falls.

Robinson said by sending the HOAs a letter after an approval, the Town would be keeping the HOAs involved.

Planner Bont said that she will need to require a separate permit for retaining walls for the rest of the PUDs, other than the Coolidge Falls Resort PUDs. Chair Spanos said he thinks one formula should work for all the PUDs.

Vice-Chair Chenard said we also have PURDs (Planned Use Residential Development) in Town.

*Note:*

*"Planned Unit Residential Development (PURD)" is not defined in the Lincoln Land Use Plan Ordinance. "Planned Unit Residential Development" means a development on a plot of land, containing a mixture of uses and building types, including single family and multi-family dwellings, business uses and open space.*

*For example, a Planned Unit Residential Development (PURD) may be permitted by Special Permit to exceed the normal density requirements for the district, to the extent authorized by the zoning ordinance, provided that certain specified standards are met.*

*For example, the purpose of a Planned Unit Residential Development may be to:*

- 1. Allow for greater variety and flexibility in development forms;*
- 2. Encourage more compact and efficient developments;*
- 3. Facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;*
- 4. Promote the permanent protection of open space; and*
- 5. Maintain and replicate the traditional New England rural character and land use pattern in which small villages are adjacent to common open space.*

*For example, in a PURD, the following uses may be permitted:*

- 1. Single family dwellings*
- 2. Two-family or semi-detached dwellings*
- 3. Town houses*
- 4. Multi-family units*
- 5. Recreational uses and open space, including a Community Building*
- 6. Business uses that are allowed in the underlying district*

[www.pvpc.org](http://www.pvpc.org)

Planner Bont said she should notify the HOAs and Condominium Associations of this change in policy, if she will no longer be asking for verification of the HOA's pre-approval or consent. She would continue to ask the question on the application about whether or not the property is part of a homeowners association or condominium association with a disclaimer. Planner Bont said that in her opinion, because the Town staff would be changing what they are doing going forward, it would be important to let the officers of all of the Homeowners Associations and the Condominium Associations know that the Town will no longer be getting verification of their approval first.

Robinson said he wants to keep the HOAs and the Condominium Associations involved in the process, but not let them know what is okay or is not okay. Robinson suggested that "we" draw up what our new policy will be and then let people know the Board will be voting on that on a certain date. At that time the people who are interested are welcome come to discuss or speak against it. That would give everyone a chance to give their opinion and it would inform everyone. We are divulging public information and it is a courtesy. Robinson said that Planner Bont has worked hard to develop a positive relationship between the Town and the HOAs, and she does not want to destroy that. Robinson asked, "Why can't we just send them their building permit – a signed piece of paper from the town sent to the association and the master association?"

Ehrman suggested the Town just post all of the Land Use Authorization Permits (LUPs) on the Town website and let all of the officers of the HOAs find the permits that have been issued by the Town on their own. That is the HOA's job. Robinson suggested that the Town word the postings as making our 'best effort', not that the Town would guarantee Town staff would send it out to each and every homeowners association or condominium association.

Planner Bont reminded the Planning Board that the only money the Town gets to support the water and sewer infrastructure is from the water and sewer tap fees and the bedroom impact fees that are collected at the time of the Application for a Land Use Authorization Permit is submitted. However, unfortunately, many people cheat. As soon as the Town issues some people a Land Use Compliance Certificate, they have their contractors back in there to create additional bedrooms and bathrooms, adding water and sewer fixtures without getting a permit and without paying the tap fees or impact fees. That is infrastructure money they are stealing from the Town. The only way the Town finds out that someone is constructing something without a permit is when either a neighbor calls who wants to know what the construction is for or the condominium or homeowners' association who wants to know why we issued a permit without their pre-approval for the project. This is a great reason to keep a positive relationship with the HOAs or Condo Associations. Bont said she is concerned that Robinson's method might keep the Town from finding this information out and from collecting the moneys owed to the Town.

Sometimes the Town finds out about unpermitted changes from the Town's assessors. However, but as part of their professional creed the assessors are not tattlers; tattling is not part of their job. They are not supposed to report back to the Town when they discover unpermitted changes because otherwise people will not let them inside to do the assessing. Because the homes in these associations and PUDS are so remote, unpermitted construction frequently happens and the Town might not find out about it for five (5) years.

Fire Chief Ron Beard said he has discovered condominium units illegally split into two units,

which creates fire hazards.

Robinson does not think the Town would really miss all that much money, but he thinks that it is worth the stamp money to send the HOAs and the Condominium Associations a copy of the Land Use Authorization Permit approvals and keep them informed. Planner Bont said if that is what they would be requiring her to do, she would probably email the permits, not mail them.

Beaudin said it is all a matter of ownership. Beaudin said to compare a homeowners' association versus a condominium association. A person who owns a home in an HOA owns their property. In a condominium association, all the land is owned by the condominium association. A condominium association should have the right to know what is going on in the condominium whereas when it comes to a homeowners' association, but he does not think it is up to the Town to get involved with that and notify the HOAs.

The Board asked Planner Bont to develop a future procedure to bring to the next meeting.

**IV. NEW BUSINESS:**

**V. PUBLIC PARTICIPATION AND OTHER BUSINESS:**

**VI. ADJOURNMENT**

**Motion to adjourn at 7:40 pm.**

**Motion: Chenard**


**Second: Belanger**

**All in favor: 5-0**

Respectfully submitted,

Ellyn Franklin  
(formerly Ellyn Gibbs)  
Recorder

Date Approved:

  
James Spanos, Chairman