

**LINCOLN PLANNING BOARD  
REGULAR MEETING MINUTES  
WEDNESDAY, MARCH 22, 2017 – 6:00PM  
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

**APPROVED**

**Present:** Chairman Jim Spanos, Vice-Chairman R. Patrick Romprey (via teleconference), OJ Robinson - Selectmen's Representative, Paula Strickon, Ron Beard (alternate & Fire Chief), Callum Grant (alternate), Norman Belanger (alternate)

**Members Excused:** Clerk John Hettinger

**Members Absent:** None

**Staff Present:** Town Manager and Town Planner Alfred "Butch" Burbank, Planning and Zoning Administrator Carole Bont,

**Staff Excused:** Wendy Tanner (recorder)

**Guests:**

- **Myles Moran**, resident of 11 O'Brien Avenue, Lincoln, NH 03251 (Tax Map 117, Lot 024) whose address is PO Box 184, Lincoln, NH 03251-0184 and Principal/Broker for Moosilauke Realty, 104 Main Street, North Woodstock, NH 03262

**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.

There was asked if there was any objection to Pat Romprey attending via phone. There was no objection.

*Pat Romprey attended via phone conference.*

*John Hettinger is excused. Norman Belanger was seated.*

**II. CONSIDERATION** of meeting minutes from:

- February 22, 2017

**MOTION to approve the minutes of February 22, 2017 as written.**

**Motion: OJ Robinson      Second: Ron Beard      All in favor: 5-0**

*R. Patrick Romprey, Paula Strickon & Norman Belanger abstained from the vote as they were not present at that meeting. Ron Beard was present at that meeting and so voted.*

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

*None.*

**IV. NEW BUSINESS:**

- A. Fire Chief Ron Beard – Discussion re: Life Safety Issues Relating to "Gated" Community.**

**Presentation:**

Fire Chief Ron Beard said that problems with the gate at South Peak Resort first arose back at 8:20 PM on February 3, 2017. That is when Jeffrey Clermont of the Beacon Property Services who appears to be a local subcontractor for a property management company known as Great North Property Management, Inc. that is the property management company for South Peak Resorts, changed the punch key code for the gates on South Peak Road at the behest of David Yager who appears to be the spokesperson for the South Peak Resort. According to the Clermont's email, the punch code was to be changed monthly.

Fire Chief Beard said that at the South Peak Resort gate there are two different types of access: one type is a keypunch pad system; the second is a key fob system. Because of the height of the vehicles in the Fire Department's fleet the firemen cannot reach the key pad without exiting their vehicles. Driving to a fire call, drivers of Fire Department vehicles had to stop, get out their vehicles and punch in a code on the inward bound gate, traveling west. Sometimes they did not punch in the right number so were denied access until they could punch in the correct number. This delay caused a loss of valuable time. For this reason the emergency services were issued remote controlled key fobs.

Fire Chief Beard said that unfortunately, the key fobs that the Fire Department was issued suddenly did not work. Prior to this the various emergency services (police, fire, ambulance) had fobs that worked on the outward bound gate, traveling east. When Fire Chief Beard discovered that the Fire Department fobs did not work he contacted the Property Management Company.

On Saturday, February 4, 2017, the Fire Chief asked for five (5) new remote key fobs – one for each Fire Department vehicle. The Fire Department's fobs only opened the entry gate before the change.

Fire Chief Beard said that further complicating the Fire Department's ability to access South Peak Resort properties he learned that the members of the Homeowners Association decided they wanted to change the punch key code every month.

Fire Chief Beard said he immediately reached out to Great North Property Management Company. Great North Property Management Company did not respond because Property Manager Peter Szeidler was out of the office until Tuesday, February 7<sup>th</sup> – three (3) days later.

Fire Chief Beard said that on Friday, February 10<sup>th</sup> he heard that Peter Szeidler was in communication with ARCOMM Communications Corporation out of Hillsboro about getting some fobs on the following Monday, February 13, 2017.

On Friday, February 17<sup>th</sup> the Great North Property Management Inc., (the property management company for South Peak Resort and Rams Horn Condominium Association) [or is it Jeff Clermont, Beacon Property Services, 581 US Route 3, Lincoln, NH 03251 who has a 3-5 year contract with South Peak Resorts to flow, sand & salt] then said that the Fire Department could purchase five (5) fobs (one for each truck) for a cost of twenty-five dollars (\$25) per fob. The check for one hundred twenty-five dollars (\$125.00) should be given to Peter Szeidler from Great North Property Management Inc.

Strickon asked if the Town could tell Mr. Yager that he should inform all of the people who live in the South Peak Resort community that if fobs were not free, Fire Department services or ambulance services would not be available to them.

Fire Chief Beard said that he would not go that far. Fire Chief Beard said he called Peter Szeidler at Great North Property Management, Inc. and asked “What is the deal?” The Fire Department did not have to pay for the fobs in the past. Peter Szeidler told Fire Chief Beard that it was David Yager’s wishes that the fire department pay for the fobs. Fire Chief Beard said “Since when do the taxpayers have to pay to provide services to the residents in that development?” Fire Chief Beard asked Peter Szeidler to tell Mr. Yager that the Town is not paying for fobs and if the gates do not open the fire department has chain saws and will cut the gate down to gain entry during an emergency. Or Mr. Yager could remove the gate.

Vice Chair Romprey asked if the problem was associated with the east bound gate or the west bound gate.

Fire Chief Beard said it was both gates. Fire Chief Beard said that the east bound gate was originally set up so that you only needed to pause at the gate and the gate would open to allow exit from the South Peak area. But in the past two years the South Peak Development decided to set the gate so that a code was required to open the gate. The general public started using the road to gain access to Loon Mountain from the Pemi Base Camp going east to Loon Mountain. In setting codes, this limited the Fire Department. After his conversation with Peter Szeidler about the fobs, Peter Szeidler sent an email to Mr. Yager. Mr. Yager’s response was that the Lincoln Fire Department would be allotted five (5) free fobs.

Strickon asked if the five (5) fobs were only for the Fire Department.

### **Police Department**

Fire Chief Beard said they were, but that the Police Department did not have to pay for their fobs either.

### **Ambulance**

Callum Grant (who works for the Linwood Ambulance Service) said that the ambulance drivers have the key pad code and that has worked for them, however, he was not aware that the code has been changing.

Fire Chief Beard said that he understood that Chief Robert Wetherell from Linwood Ambulance Service had been copied on the email for all the changes for the code and should have the most current codes.

Belanger asked Grant to confirm that the ambulance drivers can reach out through the window and access the keypad to enter the code.

Town Manager/Planner Burbank said that there is no reason why the ambulance service vehicles should not have remote control key fobs.

Strickon said that no emergency service providers should be paying for key fobs to access to a neighborhood. “The fact that these people do not want to breathe the same air as everybody else is one thing, but if they want emergency services, they can’t lock those people out too!”

Belanger said that it takes a couple more seconds to punch the code in and in a life or death situation a few seconds is very important and if it were my relative in distress, I would be saying “Hey!”

Chair Spanos asked what would happen if there were miscommunications and the wrong codes were in the vehicle trying to get through the gate.

**History of Gates**

Vice Chair Romprey asked the Board members “to step back in time for a moment”. A number of years ago before South Peak Resort put the locked gates in, the developers came before the Planning Board. The developers of South Peak Resort apparently had some kind of agreement with the Loon Homeowners Association to make a road that went through to Loon. When the developers came in front of the Planning Board they stated they wanted to put these gates in. At that time the developers very clearly stated then that these gates would let all emergency vehicles have open access. That should be in the minutes of the Planning Board meeting. Vice Chair Romprey was not sure what year that was. The South Peak Resort developers came in a second time and they wanted to change the structure of the gate and the same statements were made then. So there should not be any question at all about who should have access – it is any emergency vehicle.

Chair Spanos asked if the security gate was part of a Site Plan approval. Vice Chair Romprey said that the gate was **not** part of the Site Plan Review approvals. The gate was put in later – the gate “came after the fact”. Vice Chair Romprey said the gate did not exist during the Site Plan Review approval process. It may have been come up at the very end of Site Plan Review when the developers for South Peak Resort were negotiating with the Loon Homeowners for access, but the developers did agree to give unfettered access for all emergency vehicles. There was a big issue back then because they were not allowing fire or police access to South Peak Resort and they had agreed to that.

Chair Spanos said that he remembers the developers for South Peak Resort coming in but he does not remember if the security gate was part of a Site Plan Review approval.

Bont said Wendy Tanner went through the South Peak Resort files several months ago and typed up all the conditions of their approvals on a spreadsheet and she did not see the gate on the list. Bont said that she did not see the gate or emergency services access through the gate as a condition on any of their approvals.

**Weight Limits on Cooper Memorial Bridge(s) Restricts Access & Increases Response Time**

Fire Chief Beard said that a big part of problem associated with providing fire protection for South Peak Resort is that the Cooper Memorial Bridge(s) which is a private bridge on a private road is posted for fifteen (15) ton weight limit, which is thirty thousand (30,000) pounds. Out of the entire Fire Department fleet, there is only one vehicle that should legally cross those bridges and that is the Rescue vehicle (R4) which has no water. All of the other Fire Department trucks are over that weight limit:

- Tower 1 ladder truck is 80,000 pounds;
- Engine 1 is 60,000 pounds; and
- Engine 2 is 30,540 pounds.

- The western part of Cooper Memorial Bridge is located on a parcel known as Tax Map 118, Lot 003 owned by Lincoln South Mountain Partners c/o Russell Cooley, 39 Fieldstone Lane, Candia, NH 03034.
- The eastern part of Cooper Memorial Bridge is located on a parcel known as Tax Map 118, Lot 004 owned by CRVI South Peak TRS, Inc. c/o Duff & Phelps LLC, 919 Congress Avenue, Suite 1450, Austin, TX 78701.

This means that for a fire in the Riverside Terrace Condominiums just over the Cooper Memorial Bridge(s), the distance to travel to the first condo changes from a trip of about six-tenths (0.6) of a mile to a trip of about (4) four miles with a security gate obstruction. Due to the weight limit on the Cooper Memorial Bridge(s) the Fire Department vehicles have to travel four (4) miles from the Fire Station on 16 Church Street to the first Riverside Terrace Condo over the Cooper Memorial Bridge(s) as follows:

- Turn left & travel northeast along NH Route 112/Main Street
- Turn right onto Loon Mountain Road, going over the Loon/Adams Bridge at Loon Mountain Ski Resort
- Turn right traveling southwest along Loon Brook Road
- Go through the South Peak Resort security gate after getting out of the vehicle, punching in the code, and getting back in the vehicle
- Continue south along South Peak Road
- Continue south along Riverside Terrace R/W to the Riverside Terrace Condominiums.

Fire Chief Beard submitted a document to the Planning Board with the Lincoln Fire Department Vehicle Weights and at the end of the memo it said, “Vehicles were all weighed by K1”. (See Attachment #1.) Chair Spanos asked what it meant. Fire Chief Beard said that he is “K-1”; he brought the trucks over to the scale to be weighed. Fire Chief Beard said the ladder truck was reweighed because it had been weighed and labeled before it was purchased. There is a placard in the ladder truck that says what the truck weighs. Legally, most of the fire trucks cannot go over the Cooper Memorial Bridge(s).

Fire Chief Beard said having to deal with locked gates would add time to the Fire Department’s response because they already have to go the long way around due to the bridge weight limits. Town Manager/Planner Burbank said that when the gate is locked firemen first have to stop the vehicle, then get out of the vehicle, then punch in the key pass code (provided they have the correct code) and then get back into the vehicle and then wait for the gate to open.

Robinson said to confirm his understanding, right now the Fire Department’s protocol is to travel northeast from the Fire Station along NH Route 112/Main Street up to the Loon Mountain Ski Area, then go over the newly constructed bridge (Loon/Adams Bridge) and then turn right and come back southwest along Loon Brook Road and then South Peak Road and then Riverside Terrace R/W on the other side of the East Branch Pemigewasset River. Fire Chief Beard agreed.

Robinson asked if there was also a gate coming back from Loon in the other direction. The consensus was that there is a security gate in South Peak Resort going in both directions and both gates require a fob to allow access. Chair Spanos said that in his opinion the gate going in the other direction (southwest) was not as urgent because the fire trucks would be leaving the scene of the fire, but it was still an issue. Strickon said that the gate restricting access traveling

southwest could be an issue if the Fire Department was coming back to respond to another call, or if someone was injured.

Chair Spanos said that if an ambulance is called the gate is an issue.

### **Gates Also Interfere with Mutual Aid Assistance**

Bont said that in some cases where the risks associated with the fire is greater there may be fire trucks coming from neighboring towns such as Woodstock. Then the gate would become an issue for other Fire Departments responding to Lincoln's mutual aid request. Chair Spanos said that the other Fire Departments providing mutual aid would not have any fobs.

Fire Chief Beard said that if the call is a "First Alarm", Woodstock brings all their apparatus to help Lincoln with the fire. When that happens someone from the Lincoln Fire Department will get out of the truck and throw a rag in the sensor on the center post to keep the gate open. Town Manager/Planner Burbank said that the Fire Department and their mutual aid partners should not have to use a "gimmick" to get through the gate.

### **Inadequate Size of the Width of the Gate Opening**

Fire Chief Beard said that another issue arises with the gates, especially with the ladder truck, because the road going into the gate to the complex is not really a straight shot with the long enough stretch of road to allow access. The ladder truck is forty-five feet (45') from bumper to bumper and another five feet (5') for the basket. In order to get through the gate the driver of the ladder truck must go into the opposing lane to get the truck squared up with the opening and then open the gate. There is only about an eight inch (8") clearance if the truck is positioned dead center on the gate opening because the width of the opening in the gate is only twelve feet (12').

Vice Chair Romprey asked if South Peak Resort had either enlarged the gate structure or shrank the gate opening from what was there originally. Fire Chief Beard, Town Manager/Planner Burbank and Strickon all said they believe that the gate structure and opening have never been altered.

Fire Chief Beard said that he took issue with the small size of the gate opening years ago when South Peak Resort was building the gate. Fire Chief Beard said he told Fire Chief Nate Haynes who was fire chief at the time that he did not believe that he could get the ladder truck through the gate. At that time Fireman Beard brought the ladder truck up to the South Peak Resort gate. On Fire Chief Beard's second attempt to go through the gates he learned that he needed to "set over" by approaching in the opposite lane because he could not turn the truck once he got through the gate. Fire Chief Beard said that is just another problem caused because the gate was not built to the Fire Safety Code which was in effect at the time. The opening of the gate should be a lot wider.

Vice Chair Romprey said that problem, in and of itself, is a reason that Fire Chief Beard could use to have South Peak Resort bring the gate up to the existing Fire Safety Code.

Town Manager/Planner Burbank said that the fact that the gates were never approved by the Planning Board during the Site Plan Review process and was not a condition of approval is compelling. The Town of Lincoln does not have any other gates in town.

**Impact of Loon Mountain Recreation Corporation on Whether the Gates are Locked**

Town Manager/Planner Burbank said a couple of years ago he had a conversation with Rick Kelley, President & General Manager of Loon Mountain Recreation Corporation that operates the Loon Ski Area. (The property known as the “Loon Ski Area” is owned by CLP Loon Mountain, LLC, and the lease for the ski area is owned by Boyne Resorts. Kelley also works for both CLP Loon Mountain, LLC, and Boyne Resorts.) Kelley told Burbank that the South Peak Resort Homeowners Association keeps those gates closed because he, Kelley, allows it. If Kelley decides the gates need to be open the gates are open because of an agreement between the parties he represents and the South Peak Resort Homeowners Association about South Peak Road. Town Manager/Planner Burbank said that is how he interpreted his conversation with Kelley.

Town Manager/Planner Burbank said he thought it was interesting that those gates were allowed to remain at South Peak Resort in the first place. Vice Chair Romprey said that he could tell people why the gates were still there. The South Peak Homeowners Association was in the middle of negotiations with the “Loon people” to use South Peak Resort Road. There was some “quid pro quo”, however, the parties never followed through. Abruptly the South Peak Resort Homeowners Association came back and said, “No, we want to keep this gate closed.” Vice Chair Romprey said there was some kind of an argument between the two groups, but he did not know the details. Town Manager/Planner Burbank asked who the two groups were. Vice Chair Romprey said he thought the argument was between the “South Peak Resort people” and the “Loon Homeowners Association”. Fire Chief Beard asked if the argument was between the “Westwood Homeowners Association” and the “South Peak Resort Homeowners Association”. Vice Chair Romprey said he thought that would be logical.

Fire Chief Beard said that he did see in the February 11, 2010, Planning Board meeting minutes where Westwood homeowners came into the Planning Board meeting and complained about the South Peak Resort gates and restriction of their access. Vice Chair Romprey said he remembered that the Westwood homeowners claimed that they had legal access over South Peak Resort Road but they never substantiated it.

Town Manager/Planner Burbank said that the argument may have been between Westwood homeowners and Loon Mountain Recreation Corporation. Recently, when Burbank talked to Rick Kelley, Kelley said he rebuffed Dave Yager and said, “that gate will be closed until I say it’s open.” Dave Yager is the current spokesperson for the South Peak Resort Homeowners Association. Town Manager/Planner Burbank said that is a direct conversation Burbank had with Rick Kelley. He offered to check again with Rick Kelley to make sure he heard Rick Kelley correctly. Fire Chief Beard and Planning & Zoning Administrator Bont have been researching the issues associated with the gates. Town Manager/Planner Burbank said that in his opinion he would like to see those gates gone if the Town can do so legally.

Vice Chair Romprey said that he did not believe that the Town could make South Peak Resort get rid of the gates altogether, however, the Town could make South Peak Resort bring the gates up to a reasonable standard as required by the Fire Safety Code.

**Did MDR South Peak Resort LLC Have A Building Permit to Build the Gates?**

Vice Chair Romprey said he did not think the South Peak Resort developers had a Town Building Permit to build the gates in the first place. If the gates will not accommodate the

Town's fire-fighting apparatus, that is more than enough grounds to make South Peak Resort bring the gates up to a reasonable standard.

Strickon asked, "Doesn't health and safety come first?" Fire Chief Beard said that under NFPA 1 Chapter 18 (18.4.5) in effect at that time it says, plans for gates need to be approved by the AHJ before construction. "AHJ" means the "Authority Having Jurisdiction". Vice Chair Romprey said that he does not think that South Peak Resort developers did that. Fire Chief Beard said that he did not know if they got the Fire Chief's approval or not. Town Manager/Planner Burbank said that the South Peak Resort developers may have had the approval of the previous Fire Chief, Nate Haynes, but the current staff would not know that.

Vice Chair Romprey said that he does not think that the South Peak Resort developers ever submitted any plans for the gates. He does not think that town staff would be able to find any drawings or plans for the gates in Town Hall. Romprey wondered if perhaps South Peak Resort developers submitted something to Fire Chief Haynes? Was Haynes still the Fire Chief back then in 2009 - 2010? Fire Chief Beard said that Chief Nate Haynes was still the Lincoln Fire Chief back then; Fire Chief Haynes resigned in 2012.

Vice Chair Romprey said that he does not ever remember seeing anything about the gates relayed to the Planning Board or the Town Manager. All Vice Chair Romprey knows is that the developers for South Peak Resort never submitted a request for Site Plan Review approval for the gates and the Planning Board never saw any drawings for the gate.

Note: On April 13, 2009 the developers MDR South Peak Resort, LLC, were issued a Building Permit by Planning and Zoning Administrator Stacy Havlock [BP 2009-07 M002 L003-0003-001 – MDR South Peak Resort LLC], to "erect install access controlled gate as East entry to South Peak Resort in accordance with conditions set forth in the Attachment, dated October 20, 2008. (See attached Appendix A.) There is nothing in the file to indicate that the Planning Board was ever consulted. According to the Building Permit, an application was filed on October 20, 2008, but there are no plans for the gate in the file at this time.

### **NFOA 1 - Required Size of the Opening**

Fire Chief Beard said that NFPA 1, says the gate opening should be unobstructed and not less than twenty feet (20') wide and the vertical clearance should be not less than thirteen feet six inches (13'6") high.

Vice Chair Romprey said that the gate openings are not even close to that width.

Fire Chief Beard said that the access road must be designed and maintained to support the loads of the fire apparatus and shall be provided with an all-weather driving surface. Turning radius must be approved by the AHJ (Authority Having Jurisdiction) and turns in the road cannot reduce the width. Dead ends, when a road is more than one hundred fifty feet (150') approved provisions for fire apparatus must be provided.

### **Where to Go From Here? Code Enforcement**

Vice Chair Romprey asked what the actual goals were as far as the Planning Board was concerned; what was the Planning Board looking for? Town Manager/Planner Burbank said that upon reflection, this problem with the gates might not be a Planning Board issue, but rather an



enforcement issue for the Board of Selectmen. Does it need to be addressed to the Board of Selectmen instead?

Chair Spanos said that the Town staff needs to go back through all of the Planning Board minutes to see what the developers and the Planning Board said back then.

Town Manager/Planner Burbank said that it appears the developers never came before the Planning Board for approval. Chair Spanos said that the developers of South Peak Resort never came before the Planning Board for Site Plan Review approval for the security gates, but the Planning Board might have decided that security gates were not something the developers needed a Site Plan Review Approval for. We would need to look through past minutes to determine that.

Bont asked the Planning Board members if February of 2010 sounded like it was in the right time frame. Vice Chair Romprey thought there were meetings before that. Fire Chief Beard said that when he did the research he found that on February 4, 2010, the Westwood Homeowners complained about restricted access through the gates. Vice Chair Romprey said that the developers probably talked to the Planning Board about this matter - probably a year or so, or a year and a half before that. Fire Chief Beard said that when he was researching the Planning Board minutes on line, he found he could not go back further than 2010. Bont said that she also wanted to make sure that the Planning Board had not made a decision that she and Town Manager/Planner Burbank were not aware of. They wanted to know what time frame to look in.

Vice Chair Romprey said that he thought that Town Manager/Planner Burbank was correct and that it was a code enforcement issue at this time. Town Manager/Planner Burbank concurred and said he just wanted to make sure.

Town Manager/Planner Burbank said that in speaking to the Planning Board it did not sound like the Planning Board made any decisions concerning the gates. Chair Spanos said that he remembers the developers for South Peak Resort coming in for Site Plan Review. Vice Chair Romprey said that when the developers for South Peak Resort came into the Planning Board they had already built the gate. It was not a question of coming in and asking, they had already built it.

Town Manager/Planner Burbank said that listening to the Planning Board, now he believes that the current Fire Chief may be able to go back and require the South Peak Resort Homeowners Association to make the openings for the gates larger. Vice Chair Romprey agreed.

Chair Spanos said that if that is the case, they may just do away with the gates. Town Manager/Planner Burbank thought that would be wonderful. Chair Spanos said that with all the requirements they would need to meet they may not want to make the changes.

Robinson said that the Town staff just needs to verify that the Town did not say okay to the gates.

### **Width of the Opening in The Gates**

Town Manager/Planner Burbank said that South Peak Resort Homeowners Association (HOA) must have some restrictions associated with the Site Plan Review Approval because they have a pump house. If South Peak Resort HOA measures twenty feet (20') of travel width per lane, that means the open space has to be forty (40') feet across. The mechanism for the gate itself also takes up space. If they need to put in a proper gate there, they may not have the space required.

Robinson said that South Peak Resort HOA could remove the center island. Robinson asked how many feet of opening the gates have now. Fire Chief Beard said the openings are twelve feet (12') in each lane. Robinson said that means there were twenty-seven feet (27') between the gates now if you remove the center island. Fire Chief Beard said that was barely over half the required space. Robinson said to Fire Chief Beard, you can barely get the truck through a twelve foot (12') opening.

Fire Chief Beard said that South Peak Resort HOA would probably want a center divider because there are two (2) gates. Vice Chair Romprey asked why it would have to be two (2) gates in the first place. Fire Chief Beard said that you cannot have a gate that opens into someone's vehicle hood. The HOA needs to have an "in" and an "out" lane so the gates have to open in opposing directions.

Robinson said if the gate did not have a center lane and a fob to open both gates, the Fire Department would have a twenty-seven foot (27') wide area for the fire trucks to enter. Fire Chief Beard said that would work, providing no one was at the gate trying to punch in the key code at the same time the Fire Department hit the key fob because the gate would open the wrong way. Robinson said that the gate would still open the same way. Fire Chief Beard said that South Peak Resort HOA was having a hard-enough time with the hinges; he did not know how they would make the travel lanes any wider.

Town Manager/Planner Burbank suggested a "rolling gate". We need to do some research.

#### **When the Key Fob System Broke Down**

Chair Spanos asked Fire Chief Beard when South Peak Resort HOA started changing the codes. Fire Chief Beard said that on February 3, 2017 an email was sent by Jeffrey Clermont of the Beacon Property Services, a local subcontractor for a property management company known as Great North Property Management, Inc., the property management company for South Peak Resorts. The Clermont email said that the emergency access code changed as of 8:00 PM. The code was for emergency access only. The email said to please inform your staff of this purpose and inform them not to give this code out to anyone for any reason. The access code will be changed monthly and we will email you the new code at the time of change.

Chair Spanos said that it seems that for six (6) or seven (7) years South Peak Resorts HOA kept the punch key code the same. Then all of a sudden they changed the code? Fire Chief Beard said that South Peak Resort HOA has changed the code only once. There was a brief discussion about how many times the code has changed in the past. Bont said that one of the emails said something about changing the code monthly. Fire Chief Beard agreed.

Robinson said that if the Fire Department has a key fob they do not need a code. Strickon said that was correct. Bont said that the change took place on February 3, 2017. Today, March 22, 2017, Fire Chief Beard still does not have the fobs yet. Vice Chair Romprey said that unless those fobs are set up to acquire new codes from a single device, that could be interesting.

Fire Chief Beard said that the South Peak Resort security gate system is comprised of two different systems.

- Key fobs that are programmed. (Unless South Peak Resort HOA wants to deactivate someone's fob, once the key fobs are activated they should stay active.)
- The punch keypads that have a different type of access with a code.

**What Alternative Systems Are There?**

Vice Chair Romprey said that he was surprised that South Peak Resort HOA was not going to the phone units that are activated by phone.

Fire Chief Beard said South Peak Resort HOA used to have a radio controlled way to key the mic on the fire frequency and a little red light would flash. If the little red light flashed twice you had to key the mic again and the gate would open. But that system does not work anymore. Fire Chief Beard said he does not know how long it has been since that system worked because the Fire Department has had the one button fob to get in.

Vice Chair Romprey said that a lot of communities have phone access through a code that works pretty well.

Fire Chief Beard said that if they widen the gates and put in a radio control system in that would work. The new ladder truck even has the Opticon device in it where the firemen press a button on the dash and it sends a signal that will change all the traffic lights.

**How can the Town Get Rid of the Gate?**

Strickon asked Chair Spanos if there is anything the Town can do to get rid of the gates altogether. Chair Spanos said that this is the last one. Strickon asked what can be done to get rid of this one. Chair Spanos said that bringing it up to current code, if that is what Beard chooses to do, will get rid of them.

Vice Chair Romprey said that someone should talk to Rick Kelley to find out what his thoughts are. Town Manager/Planner Burbank said that he would reactivate that conversation.

**Did the Town Ever Grant a Permit For South Peak Resort to Install the Gates?**

Fire Chief Beard said that we need to find out if South Peak Resort developers got approval for the installation of the security gate first. Vice Chair Romprey was relatively sure that approval was not granted.

Town Manager/Planner Burbank said that they should make sure that South Peak Resort developers did not receive permission and that he did not misinterpret something that was said in a conversation here in Town Hall.

Fire Chief Beard said that they need to have documentation to support any conversation.

**Potential Town Liability?**

Strickon said that the first time that emergency services cannot get through to someone up there and the town is hit with a \$20,000,000 lawsuit, is it worth keeping this gate there.

Chair Spanos said that we cannot just rip South Peak Resorts' gate out. Strickon said that she was not suggesting that.

**Gate Interferes With Delivery of Goods and Services to Residents**

Fire Chief Beard said that John Hettinger, because he was not going to be at this meeting, wanted Fire Chief Beard to relay this message to the Planning Board. The security gates do not show up on GPS. Consequently, when service or delivery trucks like FedEx get to the gate they cannot get it to open even though the sign says they can push the button and notify someone to open the gate to let them in. Norman Belanger said the delivery and service truck drivers also call him to

let them in. Both Belanger and Hettinger said the delivery truck drivers call them often to open the gate.

Bont said that according to John Hettinger, what happens when the delivery truck drivers call him is that Hettinger often goes down there to the gate and the delivery guys hand him the package over the gate and John does the delivery for FedEx. Someone asked, “Why does John Hettinger do that?!” Bont said, “because he’s a nice person.”

Fire Chief Beard said that delivery truck drivers using GPS who want to get to Westwood which is located just past the gate traveling east, consult their GPS. The GPS tells them to go the back way over the Cooper Memorial Bridges, but when they get to the gate the gate does not open automatically anymore. Strickon said that if a number of people failed to receive their packages on a regular basis, maybe that would prove to be another source of motivation for the South Peak Resort HOA to get rid of the gate.

Vice Chair Romprey asked if David Yager was the head of the South Peak Resort Homeowners Association. Fire Chief Beard said that Yager is the current president. Vice Chair Romprey said that we really do not know how the other residents feel about this. Yager “seems to run his own course”.

Belanger said he thinks that if they can figure out how to minimize the number of drivers going through from Loon Brook Road to South Peak Road who are not part of the South Peak Resort Homeowners Association then consequently they will not have vehicles speeding through. The South Peak Road is posted for twenty miles per hour (20 MPH).

Town Manager/Planner Burbank thought that some of Loon Mountain Ski Area traffic goes through there. Just like everything else, once people find a shortcut to get from one end of town to the other without going through the congested downtown area they will continue to use it. I am sure there is a lot of traffic on South Peak Road during Loon Mountain’s peak times. Belanger said there is a lot of traffic on South Peak Road particularly during the Highland Games. Vice Chair Romprey concurred.

Fire Chief Beard said that he also has to provide fire protection services to the Pemigewasset Base Camp (Map 121, Lot 050) on Crooked Mountain Road. Pemigewasset Base Camp is a business open to the public. When he read the Planning Board minutes (he cannot remember the date) the developers of South Peak Resort wanted to put one security gate in on the southwest end of the South Peak Resort property (Map 118, Lot 039) at the beginning of Riverside Terrace R/W just after the road turns left after crossing the two Cooper Memorial Bridge(s). The principals of the Loon Mountain Ski Area (now owned by CRVI South Peak TRS, Inc.) did not allow South Peak Resort to install a security gate because the owners of Loon Mountain Ski Area operate a business within that area that would be blocked off by the security gates. They could not restrict access to the customers of the Pemigewasset Base Camp.

Town Manager/Planner Burbank mentioned a previous conversation about the Pemigewasset base camp with Rick Kelley, when Kelley mentioned that the gate would stay closed as long as he says it will stay closed and will open if he needs it open. How to handle the security gates is an enforcement issue. The Planning Board members agreed that dealing with the security gates is an enforcement issue.

- 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.

Under “Other Business” Bont had two questions that she wanted the Board to ponder.

**A. Parking Lot on One Lot in Rural Residential (RR) District for Business on Different Lot in Village Center (VC) District**

Someone called who is interested in buying a piece of property that is in the Village Center (VC) District. He said he intends to use the property for commercial purposes. He also wants to buy the lot behind the Village Center (VC) lot that is in the Rural Residential (RR) District and he wants to turn the Rural Residential (RR) lot into a parking lot for the business. A parking lot is not a structure. She did not see anything in the ordinance that addresses whether a parking lot is a “structure”.

Chair Spanos said that you could not buy a piece of land in Rural Residential (RR) and create a parking lot and rent spaces by the day. Bont said that was not his intent; this would be the parking lot for the business on the other lot.

Town Manager/Planner Burbank said that whether commercial parking spaces can be made in a Rural Residential (RR) District would have to have ZBA approval for a variance. The lot is in the Rural Residential (RR) District. If the lot was going to have a parking lot for a business on an adjacent lot then the parking lot is part of the business. If somebody buys a Village Center (VC) lot and buys a lot that abuts it in Rural Residential (RR) and then wants to eliminate the property line and combine the lots that would be another matter. Vice Chair Romprey said that he thinks that has been done several times.

Town Manager/Planner Burbank said that the lot line adjustment would be a voluntary lot merger. The property owner would just submit a Voluntary Lot Merger form with the Planning Board and the Planning Board would approve it. The lot line between the lots would disappear. However, Chair Spanos said when a property owner applies for a lot line adjustment, that does not make a Rural Residential (RR) lot “commercial”. Town Manager/Planner Burbank agreed that the lot would need a variance from the ZBA even if the lots were merged and it was all one lot.

Robinson asked if a parking lot was an allowed use in the Rural Residential (RR) District. Bont said that “parking lot” is not listed on the Land Use Schedule as a “Use”; “parking lots” as a separate use do not appear to be addressed in the Land Use Plan Ordinance (LUPO). Robinson said that if a parking lot is not addressed in the LUPO as being allowed or disallowed he thinks it is a ZBA issue; even if a property owner completes a voluntary lot merger and he combines two lots into a single lot, the zoning boundaries do not change. Vice Chair Romprey said that the property owner would not have to merge the two lots into a single lot. Robinson said that if they did, it would not change the zoning boundaries. Vice Chair Romprey concurred.

Robinson said that he sees this issue as a ZBA issue because a parking lot would not be a “permanent use” or a “restricted use”. So the property owner would have to go to the ZBA and see if the ZBA would allow it.

Vice Chair Romprey disagreed. Romprey said that he did not think the property owners would even need to do that. Robinson asked why. Vice Chair Romprey asked, “On what grounds they would have to go to the ZBA? The ZBA is only for appeals. What are they appealing?”

Robinson said that he would think that the property owner would be appealing the Land Use Plan Ordinance (LUPO) that does not address the “use” that they want. They want to use it for a use that is not permitted under the LUPO. Chair Spanos said, maybe the property owner could ask for an interpretation from the ZBA.

Vice Chair Romprey said that the use is permitted. If there is no ordinance against it, then you have to anticipate that you can use it that way. Robinson asked if that was true. Town Manager/Planner Burbank said that he was just a “lay” person but he would think that if it is not addressed it would be allowed. Bont concurred although she was not certain. (See Appendix B.)

Vice Chair Romprey said to bear in mind that there are already at least two examples of that in town. Chair Spanos and Town Manager/Planner Burbank asked for the examples. Vice Chair Romprey refused to give them.

Chair Spanos polled the board. What is the opinion of the Board, is it allowed. Strickon said that it should go to the ZBA.

Vice Chair Romprey’s argued that it was his contention is that if the parking lot use is not disallowed, what are they going to the ZBA for? What are they appealing?

Chair Spanos said that for example, if the proposed commercial use is a restaurant, a restaurant is not allowed in the Rural Residential (RR) District. Vice Chair Romprey said, “but the parking is”.

Strickon said that in Chair Spanos’ example, the restaurant is not in Rural Residential (RR) District, the parking is in the Rural Residential (RR) District. Because the restaurant and the parking are the same business, they need to be combined as a single business, not treated as two (2) separate entities. If you are having a restaurant and a parking lot, it is a single unit; they go together. It should not be split into two (2) units.

Vice Chair Romprey said what if somebody owns a business on one lot and then buys a lot across the street for parking? Strickon said that these two lots should still be considered as a single unit. It is the restaurant and a parking lot and they go together.

Chair Spanos said that the Planning Board is assuming that the lot across the street is the same zoning district too. Strickon said that if the second lot is not the same zoning district as the first lot, then the parking lot goes with the main business because the secondary business is parking. The primary business is the restaurant.

Town Manager/Planner Burbank said that if someone buys that Rural Residential (RR) lot and says that he can make money as a parking lot. Vice Chair Romprey said that is different because clearly the parking lot would be a separate “commercial use”. Strickon concurred.

Robinson asked what the difference would be if the parking lot was related to a restaurant or retail space? Is not the parking lot still part of the commercial business? Vice Chair Romprey said, “Not if it is non-paved customer parking.” Vice Chair Romprey said the Town has no on-street municipal parking to speak of. Vice Chair Romprey said he did not see how the Town could take someone to the ZBA to argue the point that this can or can’t be used when there is no provision in the Land Use Plan Ordinance (LUPO) against it being used for that purpose as long

as it is not used commercially. “We have discussed that a dozen times in the Planning Board over the years.”

Chair Spanos said that he thought that the Planning Board dealt with a similar case at one time. Chair Spanos said he thought a property owner could have a commercial front lot and a residential back lot. Chair Spanos remembered the business was permitted to run its utilities through the residential back lot to support the commercial front lot, but the business could not have a commercial venture on a residential back lot.

Town Manager/Planner Burbank asked if Chair Spanos thinks a “commercial venture” would include parking. Chair Spanos said that even if the parking lot is not paved, the lot could have drainage issues and everything else. If the property owner dug a trench and buried his propane tank for his business on the residential back lot it is not really a residential lot. Vice Chair Romprey said you would have to go through Site Plan Review for sure.

Grant said that by the terms of the Land Use Plan Ordinance (LUPO) a lot owner would have to have so many parking lots for a restaurant. By that definition a parking lot is an extension of the commercial operation of the restaurant. A lot owner cannot have the restaurant without the parking. So the parking lot is integral to the commercial operation of the restaurant; by default, you cannot have one without the other. To Grant it is clear cut that the parking lot is part of the commercial operation. He cannot run the tourist business without parking. He cannot do it; parking is part of his operation. Grant thought that it would be a ZBA issue to get a variance to allow that parking lot to be a commercial use integral to the restaurant in the Rural Residential (RR) District.

Bont said she looked at the Land Use Schedule in the LUPO for permitted business uses. One of the categories is “Retail Consumer Service or Other Business, Non-Industrial Use, Other Than Above Which Does Not Qualify as A Home Business”. Under the column for Rural Residential (RR) District it says these uses are allowed as a “Special Exception” (SE). So perhaps the applicant would apply for a Special Exception from the ZBA for putting a parking lot on a lot in the Rural Residential (RR) District. Vice Chair Romprey said that makes more sense to him, actually. Chair Spanos said that a Special Exception is better than a Variance because a Special Exception is easier to obtain. Vice Chair Romprey said that it makes more sense to him than appealing something that does not exist.

Town Manager/Planner Burbank asked Bont to make note of it so we know where this opinion from the Planning Board is when they call back. Bont said the person who called did not tell her what the commercial use is going to be. They were being very cagey.

Robinson said that there is limited parking everywhere in town on Main Street and in the Village Center (VC) District. If the Town requires all of the parking for each business to be on one lot, some of those small lots are going to have these little “photo mat booth” size businesses on lots to accommodate parking. The Planning Board is going to want the property owners to use the back lots for parking with the business up front, so I think that is the way it goes – allowed by Special Exception.

Vice Chair Romprey said that the point he was trying to bring up is that we have discussed that several times with the Planning Board over the years that it is going to happen at some point or another anyway. But the Special Exception seems the perfect way to deal with it.

Chair Spanos said that that is the reason for creating the Special Exception process is because the lot in front is already “Village Commercial”. Town Manager/Planner Burbank said that some would call it [Village Center] “creep”, but in this case if the Town did not allow someone to get a Special Exception for the parking, the Town would not be able to allow the proposed building or business.

Robinson said that also the Town would not be allowing the building, noise, lights and all that other stuff that comes with the business. Chair Spanos said that with Site Plan Review the Planning Board would require the property owner to screen the parking lot to minimize the effect on the surrounding residential property. Vice Chair Romprey said that the neighbors would have the protections of Site Plan Review, so that should not be a big issue.

### **B. Inquiries Re: Building More Large Hotels & Potential Impact on Infrastructure**

Town Manager/Planner Burbank said that one of the other anonymous inquiries the Town received recently was someone who called about buying a number of adjacent buildings, tearing the buildings down and constructing a hotel.

Bont said that there have been three (3) different inquiries about building additional hotels in Lincoln. Three (3) different parties have spoken to her about building hotels on three (3) separate sites.

- First inquiry was about a proposal to build a two hundred (200) unit hotel and, in addition, twenty (20) – thirty (30) condo units on a vacant lot (Green Acre Woodlands Inc., Map 122, Lot 001).
- Second inquiry was about a proposal to buy a series of small lots, tear down the buildings merge the lots and build a hotel with an unknown number of units on the combined lots.
- Third inquiry was about a proposal to construct a two hundred (200) hotel unit hotel, however, they wanted to know how RiverWalk got to be as tall as it was because they were reading the LUPO and wanted to know how to overcome the height restriction of thirty-five feet (35') to the primary eave.

Vice Chair Romprey said that RiverWalk Hotel had a ZBA Variance for the height. Bont said that she knew that and informed the party who called. Bont just wanted the Planning Board to know that there are three (3) parties looking at three (3) different sites on NH Route 112 for hotels – two of them were for hotels in excess of two hundred (200) units.

Chair Spanos said that the developers were going to have to tell the Planning Board where the lots were and then the Planning Board would “plug in the densities and see if it works”.

Town Manager/Planner Burbank said they were anonymous callers. Bont said two of the potential sites were identified. One site is a vacant lot owned by Green Acre Woodlands Inc., (Map 122, Lot 001). One site is two (2) adjacent lots owned by Victor Del Regno, Trustee (Map 112, Lot 002) between the Bank of NH and the Rite Aid currently supporting a few billboard style signs. Bont said that she did not know where the third site was, but the site described did not sound like either one of those two sites.

### **Height Restrictions**

Robinson said to Town Manager/Planner Burbank and Bont, “You could answer the question about the seven stories, right? And you told them the limit is thirty-five feet (35') to the primary eave, period?” Bont answered in the affirmative.



**Who Could Be Inquiring**

Chair Spanos said that obviously, the Town cannot give approval over the phone. Bont said that staff is just giving the Planning Board a heads up about the inquiries.

Vice Chair Romprey said that one inquiry may have been from the InterContinental Hotels Group (IHG® Group). The IHG® Group carries twelve (12) brands including:

- Candlewood Suites
- Crowne Plaza
- Holiday Inn Hotels & Resorts
- Holiday Inn Club Vacations
- Holiday Inn Express
- Hotel Indigo
- InterContinental
- Staybridge Suites
- Even Hotels
- Kimpton Hotels & Restaurants

That hotel group is looking for project locations all over the northeast. Town Manager/Planner Burbank said that could be but we would not know that.

**Water & Sewer Infrastructure**

Vice Chair Romprey asked if the sites identified had the infrastructure for water and sewer. Town Manager/Planner Burbank said that was one of the primary reasons why staff was bringing these inquiries to the Planning Board's attention. He cautioned that there is obviously a lot of interest in Lincoln to the point where one of the inquiries was about a plan to buy two or more properties, to demolish the buildings and to construct a hotel.

Town Manager/Planner Burbank said his caution to the Planning Board was that if these projects come to fruition, with the second expansion of RiverWalk already in the pipeline, if the Planning Board was to approve two (2) more two hundred plus (200+) unit hotels on Main Street that would start pushing the envelope of Lincoln's current sewer and water infrastructure.

Vice Chair Romprey suggested that perhaps the Planning Board should seriously consider talking about a moratorium. Town Manager/Planner Burbank said that timing is the issue. He did not want to cry "Wolf!", as these are only inquiries. Vice Chair Romprey said he understands, but if the capacity of the water and sewer infrastructure is going to be that marginal the Town Manager should let people know about it.

Vice Chair Romprey said that the last time he met in Town Manager/Planner Burbank's office a year or so ago, with Burbank, Hettinger and the Town Engineer they had a discussion about the capacity of the water and sewer infrastructure. Then they were under the impression that the Town's infrastructure would accommodate a full build out of Forest Ridge, Dennis Ducharme's entire RiverWalk project and possibly half of South Peak Resort without additional water towers and sewer capacity increases. Town Manager/Planner Burbank agreed. Vice Chair Romprey said that the Town would be looking at an infrastructure issue.

Chair Spanos asked if these possible projects would max out the water treatment plant. Town Manager/Planner Burbank said that he is speculating, however, he has not calculated any numbers. Chair Spanos said that when Burbank says "max out", does Burbank mean, "the Town

cannot add more cells?” Will that be the full capacity of the water treatment system? Town Manager/Planner Burbank said the Town has one (1) more cell the Town could add to the system. Robinson said that the Town recently added one (1) cell so the Town’s water production is now five hundred thousand (500,000) gallons more than it was a one and a half (1 ½) years ago.

Town Manager/Planner Burbank said that the town water and sewer infrastructure is still adequate, but, in the next two to three (2-3) years if those projects came to fruition that would amount to large percentage jump in demand.

Vice Chair Romprey said that the only reason he is suggesting that a moratorium be at least openly discussed, is because these people need to know the limitations of the Town water and sewer system going in. They cannot come into Town and buy that land and then say, after the fact, that the Town has to provide the water and sewer. They should know that there is a discussion about this is going on now. Town Manager/Planner Burbank said that maybe impact fees could be fronted if we did decide to move forward.

Fire Chief Beard said that the other thing the Town would have to look at is “peak draw” on the system. When they had the fire up at Rams Horn, he was in constant communication with Public Works Director Nate Hadaway and Water Treatment Plant Operator Dave Beaudin so they could give him adequate water to fight the fire. They were “maintaining” and he was only flowing three hundred to three hundred fifty (300-350) gallons per minute. Now if you add a number of major businesses that demand will increase.

Town Manager/Planner Burbank said that the Rams Horn Drive fire happened on December 30, 2017, during Christmas week, during a snow storm when the town was full of people. The Public Works Director and Water Plant Operator just barely maintained adequate water supply and pressure with the third cell in. They were running “wide open” for the fire.

Vice Chair Romprey asked if they had a pressure issue as well up there. Town Manager/Planner Burbank said, “Oh yeah. The water pressure got down pretty low in places up there.” Fire Chief Beard said that they “had to boost to within an inch of the elevation, but they were able to maintain the pressure so they did not drop below the twenty percent (20%)”.

Town Manager/Planner Burbank said that some of the folks up there did get air in their pipes; they were sputtering. Beechwood I or II did burn up a couple of pumps during that fire, that they had to replace, but it was expected. Fire Chief Beard asked, “Would that be their booster pumps?” Town Manager/Planner Burbank concurred. Fire Chief Beard said, “Their little booster pumps that they are not supposed to have.”

Fire Chief Beard said that the Planning Board has to consider more than just the number of hotel units. The Board also should consider all of the water and sewer infrastructure inside the hotel buildings with all of their amenities. If the Town adds two (2) more hotels with two hundred plus (200+) units each, the Planning Board needs to consider the fact that when everyone gets out of the ski resort they throw themselves into their hot tubs or fill up their Jacuzzi’s all at the same time. If the Planning Board were to approve two (2) hotels in addition to the next phase of the RiverWalk hotel that would add an additional five hundred (500) rooms on Main Street easily.

**Change in Appearance of Town**

Town Manager/Planner Burbank said that since he and Bont have been working in Lincoln, this is the biggest flurry of inquiries in one group. Town Manager/Planner Burbank said he is also concerned that two (2) or (3) hotels of that magnitude with RiverWalk on NH Route 112 that would constitute a huge change in the current face of Main Street. People who grew up in Lincoln already think the Town of Lincoln looks different now! Add two or three more big motels/hotels on this Main Street and that is really going to change the looks of Lincoln's downtown.

Bont said the over the past year she has received three (3) or four (4) inquiries about the Green Acre Woodlands property. Bont said that would be the site of the two hundred thirty (230) unit hotel plus twenty to thirty (20-30) condo units on six (6) acres. Chair Spanos said, that would be twenty-nine (29) condo units per acre so he does not know if a developer would have enough space for all that.

**Minimum Lot Size and Maximum Percentage of Lot Coverage & Easement for Bike Path**

Bont said basically for a hotel type development the limiting factor is the maximum percentage of lot coverage. On the LUPO Dimensional Chart the maximum percentage of lot coverage in the General Use (GU) District is seventy percent (70%) and in the Village Center (VC) District is eighty percent (80%).

Chair Spanos said, not so with condos. Bont agreed. Chair Spanos said that the developer would not have enough room for that many condos; with six and thirty-five hundredths (6.35) acres he could have eighteen (18) individual condo units with a minimum lot size per dwelling unit of fifteen thousand (15,000) square feet per unit. Bont said she did not think that the condos would work but a hotel would work. Town Manager/Planner Burbank concurred.

Vice Chair Romprey said that the developer would be over his maximum lot coverage or density for just the hotel and the required associated parking for the hotel. Town Manager/Planner Burbank said that even a hotel on that site would be jammed up against the town bike path or close to it. The topography for that lot is steep. Bont said that just recently the Town finally recorded the plan for the easement for the bike path across the Green Acre Woodlands Lot (Map 120, Lot 001) that were supposed to be recorded about ten (10) years ago.

Belanger said we have the affordable employee housing problem that might deter someone from building such a hotel. Chair Spanos said "That is their problem, not ours."

**Hotel is Allowable Business Use in Village Center (VC) District)**

Town Manager/Planner Burbank said that the gentleman who owns the property with the billboard signs now is no longer opposed to selling his property. Vice Chair Romprey said he has been resisting for years. Town Manager/Planner Burbank said that apparently, something has changed. Fire Chief Beard said someone is probably offering to pay what he wants for it.

Chair Spanos said that property is in the Village Center (VC) District (i.e., commercial) and a hotel is one of the business uses allowed in that district. The Board agreed that the primary issues to be addressed are water, sewer and parking.

**State Department of Transportation Curb Cuts, Municipal Parking & Traffic**

Fire Chief Beard asked if the owner of the property had a curb cut off NH Route 112 already. Town Manager/Planner Burbank said there are two (2) NH DOT curb cuts. Chair Spanos said that the State still may have an issue with all those units because of the traffic congestion on NH Route 112. Town Manager/Planner Burbank said that as this Main Street gets more and more busy, that could be a big issue.

Town Manager/Planner Burbank made the Planning Board aware that he made contact with the Philip L. Beaulieu, District Engineer for NHDOT - District 1. However, Burbank thinks he may have been talking with the wrong person. NH DOT Bureau of Traffic has its own department. Town Manager/Planner Burbank is not sure that parking is an area that the District 1 engineer handles. They handle curb cuts. Parking is probably the folks from the Bureau of Traffic. Town Manager/Planner Burbank is still working on getting to the right people and would like to get a history of what the DOT's long term plan is for Lincoln. The comment about the parking going away was a passing comment from the District 1 Engineer at the time that doing away with the Lincoln's municipal parking along NH Route 112 was "on their board in Concord". This comment from the District 1 Engineer has grown in Town to be "a fact". It is not really "a fact", it was just a passing comment that in retrospect probably should not have been repeated. Town Manager/Planner Burbank is trying to get that to see what it is because for planning purposes the position of NH DOT is important. Chair Spanos said that the DOT is not happy with the traffic. Vice Chair Romprey said that was not the first time they have made those comments, they made them when Peter Joseph was here as well.

Town Manager/Planner Burbank said that was good to know. Burbank said he was going to try and get a written plan for the Town of Lincoln for both the Board of Selectmen and the Planning Board. What is NH DOT going to do "if...?"

Vice Chair Romprey said that he could almost guarantee that NH DOT does not have this "plan" written down. Town Manager/Planner Burbank said that NH DOT may not. So that makes it even tougher on the Planning Board when the Board is trying to review and approve Site Plans because NH DOT's plans for congested traffic does become an issue.

Vice Chair Romprey said that even if the Planning Board wanted to and he is not saying it does or does not, he thinks that the Board "could not knock down a hotel based on traffic". If the proposed hotel was on one of those back roads or town maintained roads, perhaps, but State roads? No! Chair Spanos said that if the State says "no" to the project, you know the State considers itself to be a stakeholder.

Town Manager/Planner Burbank said that the position of NH DOT may depend upon the power of the outfit that wants to build the hotel. A company that owns Holiday Inn Resorts or EconoLodges is wealthy enough to be politically connected and probably has lobbyists in the New Hampshire State Legislature. His guess was that behind the scenes anybody who was wealthy or powerful enough was getting to the Governor who, in turn, was getting the Highway Commissioner to approve projects.

Town Manager/Planner Burbank said that is pretty eye-opening that the Town of Lincoln is getting those types of inquiries. We do not know who the inquiries are coming from, but Bont recognized one of their voices even though they did not identify themselves. Chair Spanos said

that if there are only inquiries the parties might not come to terms and the projects might never be submitted to the Planning Board or built.

Vice Chair Romprey said that there is a company out there that does a lot of buying for groups that build hotels. Town Manager/Planner Burbank inquired if they were “front people” for groups who came in looking for potential hotel properties. Vice Chair Romprey said the hotel companies use a “front end management” company. Somebody else does the research and then they try to follow up and buy the properties. If they come into Town Hall they will come in with a bag full of money.

### **WMUR-TV**

Bont said that yesterday, WMUR TV had a quick clip that said the Town of Lincoln is “the hottest place to rent for the spring.” Vice Chair Romprey asked Bont to repeat. Town Manager/Planner Burbank said that the short clip was on WMUR-TV’s main news. Bont said that it was a short blurb yesterday or the day before, right after the weather, Lincoln is the “hottest place in the State of New Hampshire to rent for the spring and summer months”.

Town Manager/Planner Burbank said that they gave the going rate for a one week for spring and early summer rental. The price to rent a unit in Lincoln was far less than anyplace else in New Hampshire. Vice Chair Romprey asked if they referred to the Lincoln area. Town Manager/Planner Burbank said that the TV clip referred to the “Town of Lincoln”. Vice Chair Romprey asked if others thought that Dennis Ducharme had anything to do with that. Bont did not think that RiverWalk or InnSeasons at South Peak would qualify as a “cheap rental”.

Vice Chair Romprey said he would be back the first week of May and should be done with his work on a dealership by then.

### **C. Elected Versus Appointed Planning Board Members**

Robinson said two (2) appointments on the Planning Board expired last week. One of those appointments was his; he was reappointed by the Board of Selectmen as their representative to the Planning Board. The other appointment was for Callum Grant to serve as Alternate to the Planning Board. Robinson asked Grant if he was interested in being reappointed as an alternate. Grant said he was. Robinson said he will inform the Board of Selectmen.

Chair Spanos said that with an elected Planning Board, the Planning Board appoints its own alternates. Robinson said that this is not an elected Planning Board yet; no one on the Planning Board has been elected yet.

Bont said nobody is going to be elected to the Planning Board until next year (2018). The terms of Planning Board members are staggered. A member of the Planning Board does not have to run for election until his/her appointed term is up. The appointed members whose terms are up next year (2018) will have to run for election. Then the following year (2019) the appointed members whose terms are up will run for election that year until the entire Planning Board is comprised of elected members. Then the Planning Board appoints its own alternates as the alternates appointed terms expire. Town Manager/Planner Burbank agreed saying that the whole Planning Board does not change at this next election.

Chair Spanos said that only the regular members whose terms are up in 2017 will have to run for election. Robinson said that the regular members whose terms are up in 2017 can be reappointed, but next year the regular members whose terms are up in 2018 have to be elected.

From there on it is an elected board and the alternates can be chosen by the Board. Town Manager/Planner Burbank said that the recent appointments would be for three (3) year terms.

Bont looked at the Rules of Procedures for the ZBA and according to the Rules of Procedure the alternates are appointed by the Board of Selectmen. (This is contrary to the Statute. See Appendix C.)

Strickon thought that the elections were interesting because a number of people who voted to elect the Planning Board did not also vote to elect the Zoning Board. Strickon did not understand why people would vote to elect the members of one board and not the other.

Chair Spanos said that it is hard to get people to serve on the ZBA. Chair Spanos said that typically you go from an elected board to an appointed board; It was not typical to go from an appointed board to an elected board. Chair Spanos said that everything else takes effect at the Town Meeting date. Chair Spanos asked why the elected membership does not take effect until next year.

Bont said that the State Statute RSA 673:2,II,(b) gives the municipalities two methods or paths for creating an elected Planning Board. One is the staggered method under RSA 673:2,II,(b)(2). What was on the warrant was the staggered method. (See Appendix C.)

There was a brief discussion about everyone's understanding about how the transition from appointed to elected boards would work. Town Manager/Planner Burbank said that the current appointments will be good for three (3) year terms and next year those members who are elected will be elected for three (3) year terms. The people whose terms expire in 2018 will run for a three (3) year term at the 2018 Town Meeting. John Hettinger's term and Paula Strickon's term expire in 2018. Pat Romprey's term and Jim Spanos' term expire in 2019.

Chair Spanos said that Planning Board alternates do not have to run for election; they are appointed. Bont said that she will check the Planning Board Rules of Procedure and the Statutes. According to the ZBA Rules of Procedure the Board of Selectmen appoints the alternates for the ZBA. According to the Statutes the ZBA "may" appoint its own alternates.

Town Manager/Planner Burbank said that according to the ZBA Rules of Procedure the ZBA members are appointed by the Board of Selectmen, even when the ZBA regular members are elected. Bont will check the Planning Board Rules of Procedure to see how Planning Board alternates should be appointed as well.

There was a brief discussion about appointing alternates on an elected Planning Board. Bont came back with an answer; "Up to three alternates members may be appointed as provided for by the local legislative body." Chair Spanos said that you really should look in the state statute. Bont said that this is talking about town meeting. Robinson asked Bont to call NHMA and get input from NHMA so we have a definitive answer.

### **Election of Officers**

#### **Motion to appoint Jim Spanos as Chairman of the Planning Board.**

**Motion: Paula Strickon      Second: OJ Robinson      All in favor: 5-0**

#### **Motion to appoint Pat Romprey as Vice Chairman of the Planning Board.**

**Motion: Jim Spanos      Second: Norm Belanger      All in favor: 5-0**

**Motion to appoint John Hettinger as Clerk of the Planning Board.**

**Motion: Paula Strickon      Second: Pat Romprey      All in favor: 5-0**

**D. 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.

**E. ADJOURNMENT**

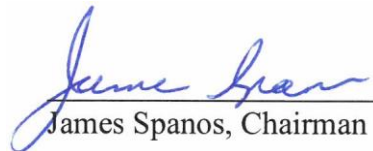
**Motion to adjourn at 7:15 pm.**

**Motion: Paula Strickon      Second: OJ Robinson      All in favor: 5-0**

Respectfully submitted,

Wendy Tanner and Carole Bont  
Planning and Zoning Recorder

Date Approved: 4/26/2017

  
James Spanos, Chairman

**Appendix A.**

Lincoln Planning Department  
(603) 745-8527

**Post in a Conspicuous Location  
at the Site of the Work**

**TOWN OF LINCOLN**

**BUILDING PERMIT**

**No. 09-07**

Has been issued to: MDR South Peak Resort, LLC  
Owner: Same  
Telephone: 745-9281

to (X) erect, ( ) alter, ( ) repair/replace, ( ) addition: Install access controlled gate as East entry to South Peak Resort. Tax map 2, Lot 003-0003-001 in accordance with conditions set forth in the Attachment, dated October 20, 2008.

Date: April 13, 2009

\_\_\_\_\_  
Building Permit Designee

**Permit must be exercised within one year and to a speedy  
completion or permit will be declared invalid.**



Town of Lincoln  
Attachment to Building Permit No. 09-07  
April 13, 2009

---

APPLICANT: MDR South Peak Resort, LLC  
OWNER: Same  
LOCATION: Map 2, Lot 003-0003-001  
BRIEF DESCRIPTION: Install access controlled gate at the East entry to South Peak Resort.

Building Permit No. 09-07 dated, April 13, 2009, is hereby issued subject to the following conditions:

1. All work must be in accordance with details proposed on the applicant's "Application For Building Permit", dated October 20, 2008.
2. Prior to commencement of construction, the applicant or the builder must confirm the location of on-site underground utilities with Public Works Superintendent Bill Willey. The applicant or his contractor, is responsible for contacting "Dig -Safe" if necessary.
3. All construction shall be in accordance with all local Ordinances (Land Use Plan Ordinance, Sign Ordinance, Subdivision Ordinance, and Site Plan Review Ordinance)
4. Installation of the interior water fixtures and sewer fixtures must be in accordance with the requirements of the Lincoln Water Regulations and the Lincoln Sewer Regulations, respectively.
5. Coordination with Fire Chief, prior to commencement of construction, is necessary in order to assure compliance with the appropriate Fire Codes.

**Note:** The zoning ordinance requires that the BOCA Codes for Fire Protection shall apply where structures are being constructed within 30 feet of another structure.

6. All work performed under this permit must comply with the building code requirements under the jurisdiction of the State Fire Marshall or the Lincoln Fire Chief.
7. A Certificate of Occupancy must be acquired from the undersigned upon completion of construction and prior to use of the newly constructed areas.
8. **THE ISSUANCE OF THIS PERMIT IS NOT AN INDICATION, CERTIFICATION OR GUARANTEE OF ANY KIND THAT THE STRUCTURE HEREBY PERMITTED IS IN COMPLIANCE WITH THE STATE BUILDING CODE OR STATE FIRE CODE. COMPLIANCE WITH THESE CODES, AND WITH ALL OTHER APPLICABLE FEDERAL, STATE OR LOCAL REQUIREMENTS, REMAINS ENTIRELY THE RESPONSIBILITY OF THE PERMITTEE, CONTRACTOR AND LANDOWNER.**

\_\_\_\_\_  
Building Permit Designee

cc: Board of Selectmen  
Fire Chief Nate Haynes (745-8093)  
Public Works Superintendent Bill Willey (745-6250)  
Assessing Department

\_\_\_\_\_  
Owner's Signature

**Appendix B.****"Permissive" v. "Prohibitory" Zoning Ordinances**

Most zoning ordinances in New Hampshire are of the so-called 'permissive' variety.<sup>1</sup>

That is, in the absence of a variance or special exception, such an ordinance functions generally to **prohibit uses of land** unless they are expressly permitted as primary uses **or** can be found to be "accessory to a permitted use".<sup>2</sup>

The "Rule of Accessory Use" is in response to the impossibility of providing expressly by zoning ordinance for every possible lawful use.

Even under a permissive ordinance, a given use may be allowed even if it is not explicitly allowed.

Those types of uses are said to be "accessory to the use that is expressly permitted".<sup>3</sup>

Most ordinances expressly provide for some accessory uses, although the common law provides for them when the ordinance is silent on the matter.<sup>4</sup>

**Adapted from § 9.02 Purpose of Doctrine, New Hampshire Practice, Land Use Planning and Zoning, Third Edition, Atty. Peter Loughlin**

<sup>1</sup> The opposite of a "permissive" ordinance is a so-called "prohibitory" ordinance which allows all uses not expressly prohibited. 4 Williams, *American Land Planning*, § 94.13 (1985).

<sup>2</sup> *Windham v. Alford*, 129 NH 24, 523, A.2d 42, (1986); *Triesman v. Kamen*, 126 NH 372, 493 A.2d 466 (1985); *Hannigan v. City of Concord*, 143 NH 567, 738 A.2d 1262 (1999).

<sup>3</sup> *Salem v. Durrett*, 125 NH 29, 480 A.2d 9 (1984) (private landing strip was subordinate to principal residential use on the property, but landing strip was not customarily associated with residential uses in the town and was not an "accessory use").

<sup>4</sup> *Dumais v. Somersworth*, 101 NH 111, 134 A.2d 700 (1957) (garage for residential use was permitted as accessory use even though not specifically mentioned in zoning ordinance.)

**Appendix C.**

**TITLE LXIV PLANNING AND ZONING  
CHAPTER 673 LOCAL LAND USE BOARDS  
Appointment and Terms of Local Land Use Board Members**

**Section 673:2**

**673:2 Planning Board. –**

II. In other towns, the planning board shall consist of 5 or 7 members as determined by the local legislative body. The membership shall be filled by one of the following procedures:

- (a) The selectmen shall designate one selectman or administrative official of the town as an ex officio member and appoint 4 or 6 other persons who are residents of the town, as appropriate; or
- (b) The local legislative body may decide, by majority vote at the town meeting, that planning board members shall be elected according to either the procedure in subparagraph (1) or in subparagraph (2). ....

Following the majority vote at town meeting, planning board members shall be elected as follows:

- (1) The selectmen shall choose one selectman or administrative official of the town as an ex officio member and the remaining planning board positions shall be filled at the next regular town election pursuant to RSA 669:17. Thereafter, a planning board member shall be elected for the term provided under RSA 673:5, II; or
- (2) The selectmen shall choose one selectman or administrative official of the town as an ex officio member and the remaining planning board positions shall be filled on a staggered basis at the subsequent regular town elections pursuant to RSA 669:17 as the term of an appointed member expires, until each member of the board is an elected member. The maximum number of elections to occur annually shall be as provided in RSA 673:5, II. When each planning board member is an elected member, such member shall be elected for the term provided in RSA 673:5, II.

**Section 673:3**

**673:3 Zoning Board of Adjustment and Building Code Board of Appeals. –**

I. The zoning board of adjustment shall consist of 5 members. The members of the board shall either be elected in the manner prescribed by RSA 669, or appointed in a manner prescribed by the local legislative body. Each member of the board shall be a resident of the municipality in order to be appointed or elected.

II. Zoning board of adjustment members who are elected shall be elected for the term provided under RSA 673:5, II. A local legislative body which has previously provided for the appointment of zoning board of adjustment members may rescind that action by majority vote and choose to elect board members. The terms of appointed members of zoning boards of adjustment in municipalities in office on the effective date of an affirmative decision to elect such board members shall not be affected by the decision. However, when the term of each member expires, each new member shall be elected at the next regular municipal election for the term provided under RSA 673:5, II.

**Section 673:5****673:5 Terms of Local Land Use Board Members. –**

II. The term of an elected or appointed local land use board member shall be 3 years. The initial terms of members first appointed or elected to any local land use board shall be staggered so that no more than 3 appointments or elections occur annually in the case of a 7 or 9 member board and no more than 2 appointments or elections occur annually in the case of a 5 member board, except when required to fill vacancies.

III. The term of office for an appointed local land use board member shall begin on a date established by the appointing authority, or as soon thereafter as the member is qualified, and shall end 3 years after the date so established. If no successor has been appointed and qualified at the expiration of an appointed member's term, the member shall be entitled to remain in office until a successor has been appointed and qualified.

**Section 673:6****673:6 Appointment, Number and Terms of Alternate Members. –**

I. (a) The local legislative body may provide for the appointment of not more than 5 alternate members to any appointed local land use board, who shall be appointed by the appointing authority. The terms of alternate members shall be 3 years.

(b) In a town which votes to elect its planning board members on a staggered basis according to the provisions of RSA 673:2, II(b)(2), alternate members of the planning board shall continue to be appointed according to the provisions of this paragraph until each member of the board is an elected member. Thereafter, the alternate planning board members shall be appointed according to the provisions of paragraph II.

II. An elected planning board may appoint 5 alternate members for a term of 3 years each, which shall be staggered in the same manner as elected members pursuant to RSA 673:5, II.

II-a. An elected zoning board of adjustment may appoint 5 alternate members for a term of 3 years each, which shall be staggered in the same manner as elected members pursuant to RSA 673:5, II.

III. The alternate for a city or town council member, selectman, or village district commission member shall be appointed by the respective council, board, or commission. The terms of alternate members shall be the same as those of the respective members and may be in addition to the alternates provided for in paragraph I.

IV. Every alternate member appointed to a planning board under this section shall comply with the multiple membership requirements of RSA 673:7, I and II.

V. An alternate member of a local land use board may participate in meetings of the board as a nonvoting member pursuant to rules adopted under RSA 676:1.