

**LINCOLN PLANNING BOARD  
REGULAR MEETING MINUTES  
WEDNESDAY, MARCH 14, 2018 – 6:00PM  
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

**APPROVED**

**Present:** Chair Jim Spanos, Vice Chair Pat Romprey (participating via phone), Joe Chenard, Ron Beard (alternate & Fire Chief), Alternate Norm Belanger

**Members Excused:** Selectmen's Representative OJ Robinson, Mark Ehrman, and Alternate Callum Grant

**Members Absent:** None

**Staff Present:** Planner Carole Bont

**Staff Excused:** Ellyn Gibbs, (Recorder)

**Guests:**

- **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)
- **Jayne S. Ludwig**, resident, 12 Pleasant Street, Lincoln, NH 03251 (Map 113, Lot 092) and Selectman for the Town of Lincoln.
- **Alfred "Butch" Burbank**, Town Manager

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

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

*Norman Belanger, Callum Grant, Mark Ehrman, OJ Robinson were excused.*

*Ron Beard was seated.*

- II. CONSIDERATION** of meeting minutes from:

- February 14, 2018

**Motion to skip approving the minutes of February 14, 2018 as amended, due to lack of adequate number of members who were present at the last meeting who can approve the minutes.**

**Motion: Chenard**

**Second: Romprey**

**All in favor: 4-0**

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

- A. Letter sent via mail from Harry Schofield, President of the Forest Ridge Homeowners Association with FRPOA's response to the public forum held at the January 10, 2018. Planning Board Meeting concerning agenda item 4, "Require Approvals from Homeowners Associations and/or Condominium Associations prior to issuing Land Use Authorization Permits (LUP) per Town Attorney." The Planning Board did not hear from any homeowners or homeowners' associations at that meeting, only from developers with a vested interest in the status quo. FRPOA requested that the Planning Board include this letter in the meeting minutes and the record for public viewing.**

**ACTION:** Vice Chair Romprey suggested that a courtesy letter be sent from the Planning Board to apologize for the oversight of not discussing this issue at our February 14<sup>th</sup> meeting. The letter would also state that the attached document will be posted on our website.

Chair Spanos said he had no objections.

*Norm Belanger arrived late after getting out of work.*

Chair Spanos said we should let Harry Schofield, President of the Forest Ridge Homeowners Association, know that it is too late to make any changes for 2018.

Planner Bont said there is a ZBA hearing on April 4<sup>th</sup>, and it is an appeal from a property owner who does not think the Town should ask for HOA approval before issuing a Land Use Permit. She asked if the Planning Board members thought they should invite President Harry Schofield to that meeting, because she thinks the ZBA decision made in that case will have an impact on all HOAs and Condo Associations going forward.

Vice Chair Romprey initially suggested that an invitation be sent in a separate letter, from the ZBA and not from the Planning Board. Chair Spanos said that President Schofield did not write to the ZBA, he wrote to the Planning Board. His letter is responding to the minutes from the Public Hearing on proposed changes to the Land Use Plan Ordinance.

Vice Chair Romprey suggested they let Planner Bont make President Schofield aware of the hearing.

**B. Status Review and Follow-Up re: Approval for the Lodge at Lincoln Station Condominium Association, Inc. (Association) at 36 Lodge Road, (Map 117, Lot 121) for Site Plan Review** to change/expand the use of common area by converting three existing spaces in the common area originally designed to be “storage space” between Buildings A and B on the first, second and third floors of the Lodge at Lincoln Station Condominium (Lodge) to three motel units which will be rented by the Association for the benefit of the Association. Property Owner: Walter Reed, President of Lodge at Lincoln Station Condominium Association, Inc., P.O. Box 897 Lincoln NH 03251

### **Plan to Record**

Planner Bont said, at the Planning Board hearing held on January 10, 2018, the Planning Board granted the request for a waiver of the subdivision and approved the Site Plan Review with conditions. Representations were made at that hearing by their attorney (Michael Conklin) that there were recorded plans that indicated the number of parking spaces and units. The Lodge at Lincoln Station property owners were trying to avoid spending the money on a surveyor to get a Mylar drawn up. Attorney Conklin represented that there was a plan already recorded that had that information already on it. At that hearing, Planner Bont and Attorney Conklin said they thought they could fashion a document that would reference those recorded plan numbers and the Town would accept that in place of a Mylar.

Planner Bont gave members of the Planning Board copies of what Attorney Conklin gave her:

1. Attorney Conklin gave Planner Bont copies of two pages of a four page recorded plan #3686 prepared by Satter Architectural & Engineering Group, Inc., titled “The Lodge” at Lincoln Station – a 140 Unit Condominium Resort Complex, 1<sup>st</sup> & 2<sup>nd</sup>, 3<sup>rd</sup> & Loft Floor Plans (**East Wing**) created years and years ago – drawn 1/28/1985.

- a. **First Page** - On the first page A-7 showing the first, second and third floors in handwriting it says: #3686, 3 of 4, “Should be 54 units”. Based on the handwritten unit numbers this page seems to illustrate portions of the first, second and third floors with handwritten numbers for portions of the first, second and third floors. In handwriting it says: #3686, “3 of 4”, and “Should be 54 units”. There are some duplicate handwritten unit numbers on this page, for example, there are two units 101. It looks like this plans shows part of Building A and part of Building B.
  - b. **Second Page** - On the second page A-7 showing the first, second and third floor in handwriting it says: #3686, 3 of 4, “Should be 54 units”. Based on the handwritten unit numbers this page seems to illustrate portions of the first, second and third floors with handwritten numbers for other portions of the first, second and third floors. In handwriting it says: #3686, “3 of 4”, and “Should be 54 units”. It looks like this plans shows part of Building A and part of Building B. The handwritten unit numbers are different on this page than on the first page.
2. Attorney Conklin gave Planner Bont copies of three pages of a five page recorded plan #2790 prepared by Satter Architectural & Engineering Group, Inc., titled “The Lodge” at Lincoln Station – a 140 Unit Condominium Resort Complex, 1<sup>st</sup> & 2<sup>nd</sup>, 3<sup>rd</sup> & Loft Floor Plans (West Wing) created years and years ago – drawn 1/28/1986.
- a. **Third Page** - On the third page A-4 showing the first, second, third and loft floors in handwriting it says: #2790, 2 of 5, “Should be 70 here”. Based on the handwritten unit numbers this page seems to illustrate portions of the second and third floors with handwritten numbers for portions of possibly the first floor, but more obviously the second and third floors. It looks like this plans shows part of Building C and part of Building D. The handwritten unit numbers are different on this page than on the fourth page.
  - b. **Fourth Page** - On the fourth page A-4 showing the first, second, third and loft floors in handwriting it says: #2790, 2 of 5, “Should be 70 here”. “Should be 70 here”. Based on the handwritten unit numbers this page seems to illustrate portions of the first floor with handwritten numbers for portions of the first floor. It looks like this plans shows part of Building C and part of Building D. The handwritten unit numbers are different on this page than on the third page.
  - c. **Fifth Page** - On the fifth page A-12 showing the third floor in handwriting it says: #2790, 4 of 5. Based on the handwritten unit numbers this page seems to illustrate portions of the third floor with handwritten numbers for portions of possibly the third floor, but more obviously the third floor. It looks like this plans shows part of Building L. The handwritten unit numbers are different on this page than on any of the other pages.
3. **Sixth Page** - Attorney Conklin gave Planner Bont a copy of the one page Site Plan of a five page Plan #3686 for The Lodge at Lincoln Station – Condotel, Lincoln, NH, surveyed 7/11/1983, drafted 12/5/1984, revised 1/8/1985, 4/3/1985, and ROW 5/6/1985 recorded September 25, 1986.

**Number of Units**

Planner Bont said that the recorded plans themselves did not have any number count for the number of units other than a reference to the “140 units”. Instead of providing copies of recorded plans that already had the specific numbers of units on the recorded plan itself, he and/or the property manager (Scott McIntyre) created an excel spreadsheet or chart with a list of units. The chart with unit numbers is not recorded. Then someone took a copy of the recorded plan and handwrote numbers of the condotel units from the spreadsheet onto a copy of the recorded plan #3683 that he submitted. Planner Bont said she downloaded a copy of the recorded plan from the Grafton County Registry of Deeds website. The recorded plan did not have any of the handwritten notes or numbers on it. Furthermore, the plans reference a one hundred forty (140) unit condotel whereas the spreadsheet lists one hundred fifty-nine (159) condotel units.

**Number of Parking Spaces**

1. Attorney Conklin told Planner Bont that Scott McIntyre, Property Manager for Lodge at Lincoln Station, went out and counted the parking spaces, and then handwrote the number of parking spaces in each section of the parking lot onto a copy of the recorded plan titled “The Lodge at Lincoln Station – Condotel, Lincoln, NH surveyed 7/11/1983, drafted 12/5/1985, revised 1/8/1985 and 4/3/1985”, prepared by Thaddeus Thorne-Surveys, Inc. Center Conway, NH 03813, recorded September 25, 1986 as Plan #3686. The number of parking spaces is not on the plan recorded in the Grafton County Registry of Deeds.
2. Attorney Conklin gave Planner Bont copies of recorded plan #2790 titled “The Lodge at Lincoln Station – Condotel, Lincoln, NH” surveyed 7/11/1983, drafted 12/5/1985, revised 1/8/1985 and 4/3/1985, prepared by Thaddeus Thorne-Surveys, Inc. Center Conway, NH 03813, recorded September 25, 1986 as Plan #3686.

**Is the Plan Submitted Meet the Recordable Plan Condition?**

Planner Bont said she cannot record either one of the documents submitted, so she was unsure how to go forward so she was consulting the Planning Board for advice. Are the plans with handwriting on them that cannot be recorded good enough for the Planning Board? If so, how does the Planning Board recommend we proceed?

Vice Chair Romprey asked how much information was currently recorded at the Grafton County Register of Deeds concerning the Lodge at Lincoln Station condominium development. The Lodge at Lincoln Station is required to have a plan recorded at the Registry of Deeds.

Planner Bont said that a plan for the Lodge at Lincoln Station Condominium Development was recorded, however, none of the plans filed that she could find had numbers on them other than the reference to the one hundred forty (140) unit condominium resort complex, but there is nothing filed with specific numbers on it, indicating one hundred fifty-nine (159) units or the number of parking spaces. Attorney Conklin essentially printed out the recorded plans and then had the property manager write numbers on them.

Vice Chair Romprey said that he does not have any issues with what Property Manager Scott McIntyre plans to do at the Lodge at Lincoln Station, but he does take issue with the fact that they will not submit a proper plan to be recorded. If someone goes through the Site Plan Review Application Checklist, the Planning Board requirements for plans are very clearly listed on that checklist.

Chair Spanos said that the Planning Board already waived those plan requirements.

Planner Bont said yes, but those requirements were waived based on Attorney Conklin's representations that the Lodge at Lincoln Station already had plans with that information recorded.

Vice Chair Romprey said the plans that were submitted by Attorney Conklin were not even remotely adequate.

Chair Spanos and Planner Bont agreed. However, Planner Bont said she understands that the Planning Board was trying to accommodate someone looking to save money. The members of the condo association are trying to make extra money for the hotel over there to offset their expenses and they thought they could do it cheaply by converting their three pre-existing storage areas into hotel rooms. Therefore, they did not want to pay for a surveyor to create the plans.

Vice Chair Romprey said he understood the Planning Board was trying to help them, but the Lodge at Lincoln Station needs to have a recordable plan, and the New Hampshire Statutes actually call for that.

Belanger asked whether anyone knew what the square footage for each of the units on the plan was as it might not meet the minimum square footage for a dwelling unit.

Chair Spanos said the Site Plan Review plan to create three (3) hotel rooms out of three (3) storage areas within the common areas had already been approved by the Planning Board for a Land Use Authorization Permit.

Vice Chair Romprey said he accepts the fact that the Planning Board approved the plan, however, he said the Town needs to hold the Lodge at Lincoln Station to the Planning Board conditions for a recordable plan.

Fire Chief Beard said that as part of the conditions, the attorney stated he could get the Planning Board recorded plans with those numbers to fulfill their requirement for recording a document. He does not think it is legal to take recorded plans and handwrite on them to try to meet the Planning Board's conditions and requirements the Planning Board set forth for this waiver. They will have to re-draw the plans on a Mylar and then submit them. Vice Chair Romprey agreed.

Chenard said that in his opinion there is another alternative. The Planning Board could require the Lodge at Lincoln Station to create an "as-built" plan, so the Town would have something to attach to the Mylar, to look at and discuss.

Vice Chair Romprey said that yes, but it's still something they'll have to propose on another plan. (The mylar.) Any way you look at it, he needs a recordable plan.

Planner Bont agreed, but said that Attorney Conklin thinks the documents he submitted are good enough.

Vice Chair Romprey said that if Attorney Conklin tried to complete this type of filing with the bank, this would not be acceptable. Vice Chair Romprey understand what Attorney Conklin is trying to do for his client, but the Planning Board has to come to the Town with an acceptable recordable plan as well. What is to stop the next applicant from coming in to the Planning Board with a similarly handwritten plan that cannot be recorded? Vice Chair Romprey said this is not a good precedent to set. The condo association should have something on file and recorded with the Grafton County Registry of Deeds already.

Planner Bont explained that the submitted plan, the PDF she mailed to members of the Planning Board, is what they have recorded (without the handwriting). The problem is that the recorded plans do not have the information the Planning Board needs on it.

Vice-Chair Romprey said to advise Attorney Conklin that the Planning Board needs an approved “as-built”, which would include his approved spaces.

Planner Bont said that that particular architectural group the previous developer used, Satter Architectural & Engineering Group, Inc., is no longer in business. Vice-Chair Romprey said that Attorney Conklin’s client could easily have someone else draw that plan up and certify it.

Chair Spanos asked the Planning Board for more thoughts. Fire Chief Beard said the Town cannot allow applicants to just start marking up recorded documents to circumvent the Site Plan Review process. If part of the requirement was a Mylar plan to be recorded, that is what needs to be submitted. If that plan is not up to date or proper, they need to take that responsibility and update it. If we allow this to happen in this case, what will stop the next guy?

The Planning Board agreed.

**ACTION:** The Planning Board decided that Planner Bont should get back to the Lodge at Lincoln Station and their Attorney and advise them to submit an “as-built plan” that the Town is able to record.

Planner Bont reminded the Planning Board that the building in question is a condotel – they are converting three (3) storage units inside to rent out.

Vice Chair Romprey asked Planner Bont if there were any other un-met conditions?

Planner Bont said that the Lodge at Lincoln Station is required to create three (3) additional parking spaces for these three (3) additional hotel units. At the Site Plan Review hearing, the Planning Board took the applicant’s word about how many dwelling units and how many parking spaces were at the site, however, the Planning Board members assumed, based on Attorney Conklin’s representations, that there were recorded plans with those numbers already listed on them.

Vice Chair Romprey said the “as-built” plans will have to show all the parking spaces.

Planner Bont said the three (3) new hotel units will not be able to stand alone as dwelling units because they will not have cooking facilities. The hotel units will be rented out by the condotel association and the rental revenue will go to the condotel association. The Planning Board’s conditions are more about how the hotel units will behave. Will they behave like a dwelling unit with cooking facilities or like a hotel unit without cooking facilities? The sticking point is what can the Town record to memorialize what the Planning Board has approved. They obviously cannot create more parking until after the snow melts.

The Board flipped to page 4 of their document, the Notice of Decision.

1. *“The Planning Board hereby characterizes the number of parking spaces as pre-existing nonconforming parking spaces, allowing one parking space per pre-existing condominium unit, instead of the currently required two (2) parking spaces per condominium unit.”*

Vice Chair Romprey asked how many bedrooms were going to be in each hotel unit.

Chair Spanos replied that each hotel unit will be like a studio with one bedroom per unit.

Below is the paragraph the Planning Board is having an issue with now.

2. *“Attorney Conklin shall provide the Town with a copy of a complete and recorded plan of the whole build-out for the Lodge at Lincoln Station. It [the recorded plan] accounts for all of the units, and shows where the parking spaces are that currently exist, so that the Notice of Decision to be recorded can make reference to the recorded plan.”*
3. *“Applicant shall provide the Town with a copy of a plan showing the current parking space count, and where the three (3) new parking spots shall be located. Applicant believes there is at least currently one (1) parking space per unit with a few extra parking spaces to spare.*
4. *“Applicant shall create three (3) new parking spaces as required, one (1) space per hotel room, to add to that pre-existing, nonconforming number of parking spaces, and show those spaces on a plan given to the Town.*

### ***Buildings***

1. *“The applicant shall submit to the town an accurate recorded plan of Wings A, B, C, D and L so the town can specifically identify these three (3) storage spaces as shown on that plan on a document to be recorded that identifies those three (3) spaces and indicates that each of those spaces are to be converted into a hotel room, with a bedroom, bathroom and no kitchen.*
2. *“The applicant shall provide something in writing to the Town to be recorded so that these spaces can clearly be identified as hotel rooms. Attorney Conklin and Planner Bont shall work together to create a clear description of the hotel spaces from the plan, so that anyone can identify where the spaces are.*

(Planner Bont: And that is because the Town is depending on the recorded plan being already in existence.)

3. *“The three (3) hotel units shall be named part of the common area.*
4. *“The three (3) hotel units shall not be sold, transferred or conveyed without prior subdivision approval by the Planning Board.*
5. *“The three (3) hotel units shall not be used to establish residency.*
6. *“The use of the three (3) hotel units shall be limited to a hotel unit to be used as a “short term hotel rental.”*

(Planner Bont said she believes that the only guidance for the definition of “short term hotel rental” would be found in another part of the *Land Use Plan Ordinance, Article V General Regulations*, where *Section J Limit on Boarding Houses*, does not apply to hotels, motels, condominiums, or other facilities furnishing temporary or seasonal accommodations for a 6-month period or less, for transient persons whose primary residence is elsewhere. For purposes of the zoning ordinance, she would interpret “short term hotel rental” as 6 months or less.)

**ACTION:** Planner Bont will draft a letter to Attorney Conklin stating that his client needs a recordable plan.

**Officer Nominations**

**Vice Chair Romprey nominated Jim Spanos for Chair.**

**Second: Norm Belanger.**

**Nomination carries.**

**Chair Spanos nominated Joe Chenard for Vice Chair.**

**Second: Pat Romprey.**

**Nomination carries.**

**Chair Spanos nominated Pat Romprey for Clerk.**

**Second: Norm Belanger.**

**Vice Chair Romprey said no way in hell.**

**Vice Chair Romprey nominated Mark Ehrman for Clerk, however, the Board did not know if Ehrman had been sworn in, so they left the Clerk position vacant for future meeting.**

**IV. NEW BUSINESS:**

No new business.

- 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.

Jayne Ludwig requested that the Planning Board to explain what the ZBA case to be continued to April 4<sup>th</sup> was all about.

Planner Bont said that the ZBA had previously scheduled an administrative appeal hearing with this person, but there was no quorum, so the ZBA recessed and reconvened the hearing to April 4<sup>th</sup> at 6:00 PM.

Town Manager Burbank explained that the Appellant is Dr. Brian Holub who is not in agreement with his Homeowners Association (HOA) and disagrees even with their title of HOA. The Town was asking for the HOA's approval prior to issuing a Land Use Authorization Permit, but the applicant also had not submitted plans; so he has now appealed the Planner's decision denying his application for a Land Use Authorization Permit. We will be discussing the role of HOAs at that hearing.

Town Manager Burbank said that from an enforcement standpoint, what Holub is saying is that the Town of Lincoln has no enforcement authority and cannot hold up his Land Use Permit Authorization Permit decision because an HOA or master association is having an issue.

Town Manager Burbank said that he understands that Holub and the master association for South Peak Resort are suing each other, because the Architectural Review Board (ARB) will not sign off on his building plan.



Town Manager Burbank said that historically, from an enforcement standpoint he as Town Manager and Fire Chief Beard as Fire Chief and Code Enforcement Officer are the Town's enforcement arm.

Vice Chair Romprey interrupted and said, he knows that in the past the Town has said to applicants from developments like South Peak Resort that the Town should look to the master association for every project that has come in like this.

Vice Chair Romprey said when South Peak Resort commits with this person who wants to buy or build a house, the South Peak Resort people make a point of explaining to buyers that they have a master architectural association and no buildings will be allowed up there unless the association approves the buildings. That concept is in the meeting minutes from the very early stages of the development of the South Peak Resort. That being said, if South Peak Resort's Architectural Review Board is not approving a proposed project, how can the Town issue a permit?

Planner Bont said that today, Mary Pelchat was filing documents, as we are trying to make more space in the filing cabinets and Mary came across a number of approvals from the Architecture Review Board at South Peak Resort, from over a period of years.

Townmanager Burbank said just so the Planning Board is aware, this guy is going to sue the Town, unless he prevails at the ZBA. We have attorneys involved. We need to know whether this matter was discussed at the Planning Board historically. Holub is saying that no matter what, we should issue our Land Use Authorization Permits and whatever happens between him and the homeowners association is none of the Town's business. However, it is the Town's business because it goes to what people have approved as part of the South Peak Resort Development and other developments.

Joe Chenard said he thinks there is a state statute that covers that issue.

Vice Chair Romprey said that if the Town issues Holub's permit, then the homeowners association will sue Holub. Romprey does not see how the Town wins either way.

Town Manager Burbank said for the benefit of updating Chenard, Holub exceeded the maximum size of the building up there by one hundred feet (100') and that he initially got approved for the overage by the HOA. They have some strict square footage maximums up at South Peak Resort.

Vice Chair Romprey said Planner Bont should also send the letter to Forest Ridge Resort Master Association President Harry Schofield, asking what their approvals are like up there, or he will take objection to the same thing he told the Planning Board about South Peak.

Town Manager Burbank said he thinks that a lot will hinge on what is written in the record, and what the Planning Board knows they have approved.

Planner Bont explained that Holub had two sets of plans. One set of plans he submitted to the Town, which included a partially finished basement. A second set of different plans that he submitted to the HOA for approval with no finished basement. The South Peak Resort HOA has strict rules about the minimum and maximum size of a house. We understand that a house up at South Peak Resort can only be between twenty-five hundred and six thousand square feet (2,500-6,000 sf). We understand that Holub submitted plans for a house that was six thousand one hundred square feet (6,100 sf). We understand the ARB went back and forth with Holub and eventually gave him a waiver for the extra one hundred square feet (100 sf). Holub then

convinced the ARB to let him put in a 1900+ square foot basement because such a basement would make for a much sturdier structure. So, the ARB also gave him a waiver to build a basement but the condition for being allowed to build the basement was that he would only use the basement for storage and not for any living space whatsoever.

The Town gave Holub a Land Use Authorization Permit. We understood that Holub had HOA approval, but it did not occur to us to get copies of the approved plans from the HOA. It did not occur to us that the plans we received were different from the plans given to the HOA. The Town gave approval for the partially finished basement, assuming they were the same plans that had been approved by the HOA.

Planner Bont said that later when Town staff went to inspect the Holub house upon completion in order to issue a Land Use Compliance Certificate (LUCC) they saw that Holub had reconfigured the first floor and had turned a storage area on the first floor into a very large bunk room with approximately eight built-in bunk beds. The contractor told Town staff that according to the HOA, Holub was not allowed to finish the basement. Because Holub had swapped out the storage room for a sixth bedroom, he was basically square with the Town, because although he converted the storage room on the first floor into a bedroom, the bedroom that originally he said was going in the basement was now on the first floor and although plumbing was “stubbed out”, nothing was completed in the basement at the time of inspection.

Planner Bont said that on the land use compliance certificate, she wrote, “We understand that he is not allowed to put in any kind of living space in the basement.”

Town Manager Burbank and Planner Bont explained that months after the Town has issued a Land Use Compliance Certificate (LUCC), the Town got a call from the President of the HOA, asking the Town why we gave Holub a permit to finish his basement; the Town had not issued a permit for Holub to finish his basement. Code Enforcement Officer/Fire Chief Beard went to follow up on the inquiry and saw that contractors were doing work in the basement of the Holub house without a Land Use Authorization Permit. After being contacted, Holub then brought in an application to finish the basement, which Planner Bont denied as he had no HOA approval. Meanwhile, the HOA president came down to the Town Offices to review and compare Holub’s plans that were approved by the ARB with the plans Holub submitted to the Town. That is when the Town and the HOA figured out that they had approved two different plans.

Town Manager Burbank clarified that with the Holub home is over 7,000 maybe 8,000 square feet, above grade including the basement. According to the assessment card, the house has the following square footage:

First Floor	2,320	square feet
Upper Story	4,464	square feet
Unfinished Basement	1,946	square feet
Total:	8,730	square feet
<u>(Not included):</u>		
Cathedral Ceiling:	793	square feet
Slab	374	square feet
Deck	1,211	square feet
Screened Porch	324	square feet
Open Porch	612	square feet
Garage	810	square feet

Town Manager Burbank said that when the Town receives an application for a Land Use Authorization Permit and as part of that application collects water and sewer tap fees and bedroom impact fees, that is the Town's only chance to collect revenue to support the Town's water and sewer and other infrastructure. If the contractors had gone in and installed two bedrooms and two bathrooms without the Town knowing, the Town would not have gotten a dime to pay for water, sewer or town services to support those additional uses.

Planner Bont said Holub told her that his basement was none of her business, she should only care about whether she gets the money, and he would write her a check. He did not want to fill out an application or submit a plan. She sent him back the check because he had no plans and no HOA approval. Holub did submit plans before the last hearing.

Vice Chair Romprey asked if the HOA has moved against Holub. Town Manager Burbank said he does not think they have actually sued each other yet, but they both have lawyers. Planner Bont said the Town has received a letter from the HOA, along with a letter from his lawyer.

Vice Chair Romprey asked what Holub's basis for a suit against the Town is if he has not turned in accurate plans. Town Manager Burbank said he wants the Town's approval so he can use that approval against the HOA. The Town is between a rock and a hard place, because whoever we side with will probably take us to court.

Vice Chair Romprey said that there is precedent with what the Town has done, relating initially to South Peak Resort. As was found in the records, there are other precedents at Loon Village and at Forest Ridge, and Beechwood. You can go back 14-16 years in Planning Board meetings and find where that is stated in Planning Board meetings, that Town approvals are subject to homeowner or condominium association covenants and restrictions.

Town Manager Burbank said that he believes that it is in the Town's best interest in this situation to side with the HOA, because whatever one individual homeowner thinks the Town is comprised of many HOAs and Condo Associations.

Planner Bont said that Holub is challenging the authority of the HOA and the Architectural Review Board (ARB) with the claim that the owner of the HOA owns too much land to make his HOA an actual HOA. Holub says that South Peak Resort is still in the "declarant phase".

Vice Chair Romprey said he was confused, as the ARB and HOA were originally separate entities. Have the ARB and the HOA at South Peak Resort been merged together?

The rest of the Board is unsure of the history of South Peak Resort or any possible merger.

Vice Chair Romprey said again that yes, the ARB and the HOA were previously separate entities. He understood that the developers of South Peak Resort previously had sold too much land to gain legal HOA status. He knows in the past, the Board was confronted about this issue and he believes the names of the people involved are on record in various Planning Board and ZBA minutes.

Chenard agreed that the ARB and HOA were separate entities, and even if a developer wanted to make a change on his plan, he had to go to the ARB for approval before he got approval from the master association to do so. In this case, Chenard wondered if perhaps the Town could give Holub approval and say, "You are subject to any approvals or restrictions from your association, or you two have to fight it out yourselves in court."

Vice Chair Romprey agreed, saying he would respond to Holub in a way similar to, “If you want to build a basement, we have absolutely no objection at all. But you are subject to your association’s approval.” That would get the Town off the hook completely.

Chenard said according to federal law, the Town cannot give variances for master associations.

Town Manager Burbank said that with our knowledge of the building’s large size and exceeding the maximum square footage, should the Town really act like the Town has no objection?

Fire Chief Beard said this situation could be very simple. Holub bought the property, submitted plans to the ARB for approval, accepted the ARB’s decision, and began to build. It should be a no-brainer in court that he accepted the ARB’s authority and then disobeyed the rules.

Planner Bont said that at this time the HOAs are depending on the Town to look and ensure that the applicant has the HOA approval before the Town issues a Land Use Authorization Permit.

Fire Chief Beard said Holub should not be able to sue the Town. He should sue the HOA and then if he wins, he can bring us the court document stating the HOA cannot restrict him.

Town Manager Burbank said David Yager, the President of the ARB, is also conflicted with Holub – they are also co-investors at Forest Ridge Resort as members of New Jefferson Holdings, LLC.

Susan Chenard said that this decision should come down to, is the town okay with what you are doing and does it meet the town rules? And then, after that you are subject to approval by the HOA and ARB. It is not up to the Town to know all the HOA’s rules and regulations, which are constantly changing.

Planner Bont said we have been attempting to get a good conversation going for years with the HOAs. We finally have a number of the HOAs on board to approve what they care about first, and then the Town approves anything under the Town’s jurisdiction afterward. Usually what the Town and the HOAs care about are different. For example, the Town does not regulate the architectural details of residential buildings; the HOAs leave regulation of driveways, lots sizes, building heights and setbacks to the Town.

Chair Spanos said he would just send the applicant on his way without offering any advice.

Town Manager Burbank reminded the Board that their only source of revenue is bedrooms and bathrooms, and if we had followed the recommended procedure, we would have never known about these rooms. That was almost a \$12,000 loss.

Fire Chief Beard said that Holub deceived the Town from the beginning with the two different sets of plans. He made concessions that he would not finish the basement, arguing for structural stability. The plan approved by the HOA was not submitted to the Town.

Planner Bont said Holub had originally designed the house to put all of his steps within the setback areas, as well as the overhang of his house. After some pushback Holub agreed to remove the stairs from the setback area, but wanted to leave the overhang within the setback area. She and Town Manager Burbank who was also the Town Planner at that time consulted with both the ZBA Chair and the Planning Board Chair at that time. Together we decided the Town would not make Holub go to the ZBA for a variance for the overhang, because he had finally removed the stairs from the setback.

Town Manager Burbank said one of the concerns of the South Peak Resort HOA is that Holub may be looking to build an AirBnB, which is directly against the HOA regulations.

Vice Chair Romprey suggested they ask Harry Schofield for a copy of his HOA bylaws.

## VI. ADJOURNMENT

**Motion:** Romprey

**Second:** Beard

**Motion carries. (5-0).**

Respectfully submitted,

Ellyn Gibbs, Recorder

Date Approved:

  
James Spanos, Chair

