

Planning

From: Harold Schofield <hschofield@cox.net>
Sent: Monday, July 20, 2020 3:50 PM
To: Planning
Cc: Ray Korber; Town Manager; Bob McLaughlin; Bob McLaughlin; Dave Larsen; Harold Schofield; Rory Parnell
Subject: FRPOA Follow Up Commentary On Mie Shepard's July 15, 2020 PB Meeting Testimony
Attachments: FRPOA 07.15.2020 PB Meeting Follow-up Comments on M. Shepherd Testimony.pdf

Dear Carole,

Hope you are staying cool. Attached in pdf format is letter detailing FRPOA's response to Mike Shepard's comments at last Wednesday's PB meeting. Since there was no public forum we were not able to comment. We will appreciate your getting this document to the planning board members ASAP so they have time to read it prior to the Wednesday night meeting.

We will likely submit a follow up document on Wednesday.

Thank you,

Harry Schofield
President, BOD, FRPOA

**Forest Ridge Property Owners Association
174 Forest Ridge Drive, Suite 101
Lincoln, NH 03251**

July 20, 2020

(Via email)

Planning Board
Town of Lincoln
Lincoln Town Hall
PO Box 25
Lincoln, NH 03251

RE: FRPOA Written Response and Testimony Submitted As Part Of The July 22, 2020 Planning Board Meeting Concerning The Non-functional Detention Ponds At The Pines.

Dear Planning Board Members,

At last Wednesday's July 15, 2020 Planning Board (PB) Meeting, Mike Shepard once again represented Rick Elliott of Mt. Coolidge Construction (MCC). As we have previously pointed out, Mike Shepard is not licensed to practice law in NH, and to the best of our knowledge has no financial interest in MCC. Therefore, it is unclear why the Planning Board should allow to represent Mr. Elliott at a public meeting. Beyond the propriety of Mr. Shepard's representation, Mr. Shepard's public comments were misleading at best. For example:

- Mr. Shepard, in response to the question who will inspect the subject ponds annually, and who will maintain the ponds, stated that the inspections and maintenance will be the responsibility of condominium association for The Pines.
 - **Truth:** MCC has no authority to commit The Pines owners to do anything. As explained in the letters of Attorney Rory Parnell and Attorney Robert McLaughlin, the current Board of The Pines is unlawfully constituted under the Association's By-Laws and the New Hampshire Condominium Law. Any purported action by the "Board" or Rick Elliot is ultra vires and legally ineffective.
- Mr. Shepard said he met with owners at The Pines, and that they agreed with the proposed approach.
 - **Truth:** One Pine's owner who was in contact with many other owners in The Pines has told us she knew nothing about any contact of the owners with Mr. Shepard or the "Board" of The Pines. In fact, because of their frustration with the lack of responsiveness, and shoddy and incomplete work, the owner and her husband sold their unit. I have attached a copy of an email she sent me explaining her view of the situation as Attachment A. **We urge the Planning Board members to read the Attachment A email to get an accurate idea of the views of the owners in The Pines.**
- Mr. Shepard complained about all the delays caused by the Town.
 - **Truth:** Had MCC not let its AoT permit expire last fall, they would have saved six months. If they had developed an acceptable alternative for stormwater management, they would not be facing the opposition they now have to address. If they had provided timely and

complete submissions, this matter could already been resolved. All delays are their own fault. The Planning Board should reject the allegations of the applicant that the Town is in any way responsible for delays.

- Mr. Shepard said the current detention ponds do not work because the ground is too impervious and the proposed retention pond solves that problem.
 - **Truth:** We suspect that if MCC had completed adequate testing and evaluation of the site, it would have been able to design a more appropriate system. However, MCC designed and ultimately built a system that does not work. Now, it is clear their goal is to seek approval of the wet retention ponds with permanently standing water, declare victory, and leave the mess for someone else to clean up. A gravel wetland design would avoid problems with impermeability and would result in better control in all ways.
- Referring to our lawsuit, Mr. Shepard said the Grafton County Judge decided in NJH/MCC favor, that they have the legal right to unilaterally annex new junior associations to Forest Ridge.
 - **Truth:** In his ruling rejecting their request for summary judgement, Judge McLeod did not rule on the question of unilateral annexation, but instead determined that even if that right existed, the Declarant had not satisfied the minimum standards to permit annexation, and denied the Petitioners request for summary judgement. It is worth noting that Judge McLeod's decision ruled in favor of FRPOA that the 2013 amendment to the Declaration was proper despite arguments to the contrary by New Jefferson Holdings (NJH) and MCC.
 - FRPOA repeatedly sought to discuss and hopefully resolve these issues with NJH and MCC over the years. Rather than discuss these issues with us, NJH and MCC chose to bring the lawsuit against us in 2018.
- Mr. Shepard testified that The Pines will be responsible for the ponds, and that if they do not work, The Pines owners will bear responsibility.
 - **Truth:** Essentially, Mr. Shepard admitted they are trying to dump the responsibility for the ponds and run. Assuming at some point The Pines becomes legally annexed to Forest Ridge, FRPOA, as master association will bear full responsibility for the ponds. FRPOA is responsible for **all Forest Ridge infrastructure**. This includes stormwater management and drainage, utilities, roads, common area landscaping, ski bus, plowing, and the Sports Club. Mr. Shepard's comment only emphasizes FRPOA's vital interest in assuring that the stormwater management systems in The Pines are properly designed and constructed. MCC refuses to work with us and we must rely on the Town to require MCC to do what is right.
 - If The Pines does not become legally annexed to Forest Ridge, both Forest Ridge and the residents of the Pollard Road area will be subject to whatever drainage problems exist and the limited resources of a stranded, stand-alone condominium association of 24 or fewer units to fix it.
- Mr. Shepard. stated that the large pond behind Forest Circle has steeper sides than The Pines detention ponds and that FRPOA has done nothing about it.
 - **Truth:** FRPOA does not own the large pond behind Forest Circle, and has no legal right to modify its embankments. The large pond and the immediately surrounding property is still

owned by NJH and has never been annexed into the Forest Ridge Community. Further, we doubt that Mike Shepard has ever measured and compared the slopes of the ponds.

In conclusion, while Mr. Shepard has the right to speak as a member of the public during the public comment session, we object to the deference given him by the Planning Board when he purports to represent the applicant. He is not the applicant and cannot represent the applicant as its attorney since he is not admitted to practice in New Hampshire.

If the Planning Board nonetheless chooses to allow Mr. Shepard to speak for MCC, you need to recognize that much of what he says is wrong or at the very least misleading. In order to maintain the integrity of its proceedings, the Planning Board should not allow this to continue.

Respectfully submitted as part of the July 22, 2020 Lincoln Planning Board Meeting testimony.

A handwritten signature in black ink that reads "Harold Schofield". The signature is written in a cursive, flowing style with a large initial "H".

Harold Schofield
President, Board of Directors
Forest Ridge Property Owners Association
cc: Butch Burbank, Town Manager, Carol Bont, Town Planner

Attachment A – Email From Pines Owner Kristine Klimavich

From: Chris K
Subject: the pines
Date: July 18, 2020 at 6:15:23 PM EDT
To: Harold Schofield <hschofield@cox.net>
Cc: Doug Klimavich

Hi Harry,

Just wanted to reach out to you and update you where Doug and I stand regarding living in The Pines.

Back in December I had contacted you as you were president of the master association, because I had received a letter from Richard Elliot indicating The Pines would shortly be turned over to the owners. I knew enough to realize this was an important step and as an owner I needed to understand the legal implications of all of this. You, Bob and Dave were gracious enough to share with me the logistics and facts of how a condo association is typically formed starting from the building of the units to the turning over of the development to the owners via the creation of the junior association. After this meeting, I commenced educating myself on NH condo law. I dug into the specific details via the legal formation documents of The Pines. It didn't take too long to realize there were **multiple** violations of NH condo law regarding the Pines. To name a few- no annual meetings have occurred, no budgets, no balance sheets (reserves certainly were unknown) or results of operation, - essentially zero communication with the owners. At that point I gathered together the owners of the Pines in January for a meeting to share what I had learned and to determine a course of action that would serve to protect our interest and investment. I was amazed to find out nearly all owners also had a punch list of items still needing to be completed to their individual units. The Pines literally had no areas of completion - the common areas were a mess, individual units were not complete and any upkeep on the older units (like re-staining of decks) certainly was not on any schedule to be maintained. We decided that we would hire an attorney to assist us with the issues. A contract was signed and a retainer forwarded to our lawyer. Unfortunately, the lawyer we hired was terminally ill and passed away shortly thereafter. His son, in the firm said he would be able to take on our case. Covid-19 hit shortly after. At that point I received a letter with a return of our retainer from the attorney indicating he wouldn't be able to handle our issues until at least August of 2020 and that we should consider getting alternative counsel if we wanted it done sooner. I communicated this to all owners. The owners were divided - some no longer wanted to engage an attorney and others did. I was very disheartened by this response.

After much consideration, Doug and I decided to put our property on the market for sale. We no longer wanted to have to deal with all these issues especially where the owners do not understand the implications of the severity of what is going on and the response from the builder is horribly slow or non-existent and who knows what agenda the investment company has - The property is a mess, there is building debris all over the place, there is an abandoned vehicle in one of the driveways, water is an issue all over that property and resulted in much icing during this past winter (our driveway still remains improperly graded resulting in huge puddles which turn into sheets of ice in the winter) much of the

July 20, 2020

plantings in the landscaping are now dead, there is no mowing of lawns because there aren't any lawns just weeds (the people that are in the same complex as us actually purchased a lawn mower to take care of the "weed mowing" themselves). Additionally, we have witnessed the building of the units over the past three years - the construction of these buildings was done half assed- units were framed and then left open to the elements resulting in the wood being weathered, deteriorated and then simply covered with wood siding. Conversations with the workers affirmed the shotty work as well - we found out the previous owners of our unit insisted the siding be removed as black mold had developed and resulted in exasperated respiratory issues in their health! Essentially, when this association is turned over to the owners, they will be inheriting liabilities of unknown magnitude. Given our knowledge of all of this it would have been ludicrous to stay there! I am relieved the condo was sold and went through without a hitch this past week. Thanks to God-

I must say my eyes have been opened regarding condo issues. If we ever decide to purchase a condo again, I certainly will know what questions and documents to ask for.

That is my unfortunate update - we definitely were saddened to come to the realization that selling was the only logical option. It is a beautiful area.

If you want to chat, please feel free to call.

All my best,

Christine

Planning

From: Harold Schofield <hschofield@cox.net>
Sent: Tuesday, July 21, 2020 4:13 PM
To: Planning
Cc: Town Manager; Ray Korber; Rory Parnell; Bob McLaughlin; Bob McLaughlin; Dave Larsen; Harold Schofield
Subject: FRPOA Offer Of Resolution For The Ponds
Attachments: FRPOA PB Testimony Regarding MCC application (7-22-2020).pdf

Dear Carole,

Attached in PDF format is our FRPOA testimony for tomorrow night. Please note Carole, that, in the interest of reaching a collaborative agreement tomorrow regarding the ponds, the attached letter puts forth an offer of resolution. I point this out because last Wednesday there was no public hearing? Thus, we presume there will be one tomorrow on this topic, because much has happened since June 24, 2020 that abutters and stakeholders like FRPOA should have the right to present before any vote is taken.

Once again, please see that the Planning Board Members get this in time to read and digest it ahead of tomorrow nights meeting.

Thank you,

Harold Schofield
President, BOD, FRPOA

**Forest Ridge Property Owners Association
174 Forest Ridge Drive, Suite 101
Lincoln, NH 03251**

July 22, 2020

(Via email)

Lincoln, NH Planning Board
Town of Lincoln
Lincoln Town Hall
PO Box 25
Lincoln, NH 03251

RE: FRPOA Written Response and Testimony Submitted As Part Of The July 22, 2020 Planning Board Meeting Concerning The Non-functional Detention Ponds At The Pines.

Dear Planning Board Members,

Over the last few weeks, the Forest Ridge Property Owners Association (FRPOA) has submitted four letters to the Planning Board related to the application of Mt Coolidge Construction (MCC) to designate the “ponds” at The Pines as retention ponds which will hold standing water at all times, instead of detention ponds which will dry up between precipitation events. In these letters, we pointed out the disadvantages of the proposed retention ponds and requested the Planning Board to require MCC to construct a system which will drain between precipitation events, namely a gravel wetland.

Proposed Solution:

FRPOA recognizes that this drainage issue affects downstream Lincoln residents in the Pollard Road area as well as Forest Ridge and The Pines. Therefore, right from the start FRPOA has focused on finding the best possible long- term solution. A solution that downstream Lincoln residents, Forest Ridge residents and residents at The Pines will be happy with. That solution, as well documented in our many letters on file, is a Gravel Wetland. Therefore, to resolve this issue in the best interests of all parties, and to avoid either an appeal or litigation by FRPOA, we propose the following:

If the Planning Board requires that MCC design and implement a gravel wetland to replace its proposed retention pond, FRPOA will agree to accept the long-term maintenance of The Pines stormwater control system under the following conditions:

- **MCC finishes The Pines (roads, landscaping, etc.) such that it becomes substantially complete as required by the Forest Ridge Declaration and properly annexes The Pines to the Forest Ridge Community.**
- **MCC establishes an owner-controlled board at The Pines. We agree to work with the owner controlled board regarding maintenance of the gravel wetland until such time as The Pines is lawfully annexed.**

In support of this proposal, we reference the following summary of the letters we submitted in support of this solution:

- **June 29, 2020 Letter from Robert S. McLaughlin**
In his letter, Attorney McLaughlin pointed out that any claim by MCC that it controlled the Board of The Pines was unlawful. The authority of the developer to control the Board expired before the end of 2018, and at that time governance of the association should have been turned over to the owners. MCC failed to comply with this requirement and cannot bind the owners. Therefore, MCC is able to offer no assurance that anyone will inspect and maintain the stormwater control system they construct.
- **July 6, 2020 Letter from FRPOA regarding the conduct of the June 24, 2020 meeting:**
In this letter, we point out:
 - The improper behavior by Mike Shepard, representing Rick Elliott;
 - False representation by Mike Shepard concerning the authority to bind The Pines owners to accept the ponds;
 - Consistent MCC and NJH track record of ignoring their financial responsibilities to Forest Ridge on multiple levels demonstrates complete lack of credibility; and
 - Benefits of a Gravel Wetland, and the complete lack of consideration for FRPOA's proposed Gravel Wetland.
- **July 15, 2020, Letter from Attorney Rory Parnell on behalf of Forest Ridge:**
Attorney Parnell's letter on FRPOA's behalf summarizes and re-enforces Bob McLaughlin's June 29, 2020 letter summarizing FRPOA's position as follows:
 - Our long-standing objections to the MCC proposal to install a retention pond, due to the safety and liability concerns that will result from constructing an "attractive nuisance."
 - Despite verbal and written comments to the contrary by Mike Shepard and Rick Elliott, MCC has failed to provide legitimate legal certification (proof) of acceptance by The Pines for the maintenance obligations imposed by the ponds, and that MCC cannot take any action to bind the owners in The Pines in that regard.
- **July 20, 2020 Letter from FRPOA**
In this letter we point out and correct various false or misleading statements made by Michael Shepard at the July 15, 2020, Planning Board hearing, and request that he be limited in his ability to represent MCC before the Planning Board.

We reaffirm the statements made in these letters and request that they be included in materials considered by the Planning Board at it's July 22, 2020 hearing on MCC's application.

We would also like to comment on two other letters before the Planning Board.

Letter of Mr. Richard Elliott dated July 6, 2020: We would like to specifically address the July 6, 2020 Letter to the Planning Board By Rick Elliott concerning maintenance of the ponds. In this letter, Mr. Elliott states that he is the president of The Pines At Forest Ridge Condominium Association and that:

- the Pines CA will be responsible for operation and maintenance of the detention ponds once the proposed alterations are made.

- the long-term maintenance of the detention ponds will be easy for The Pines CA to manage, and that their operation and maintenance cost has been included in the budget for The Pines.
- transition to an independent Board of homeowners at The Pines, not controlled by the Declarant is underway, having unfortunately been delayed due to complications caused by the pandemic.

Truth: Except for his reference to the phase under development governance procedure contained in the Forest Ridge Master Declaration, **nothing in Mr. Elliott's letter is true:**

- The Pines is NOT currently a properly annexed part of Forest Ridge.
- The authority of MCC as the Declarant to control the Pines BOD expired in 2018.
- The NH Condominium Act forbids a board controlled by the Declarant (MCC) from legally binding the association, once it is turned over to the owners.
- Mr. Elliott cannot claim that the transition to an owner controlled board would have occurred earlier if not for the pandemic. The transition to an owner controlled board was required before the end of 2018, and the coronavirus responsible for the pandemic was not even identified until over a year later. During that time, we are aware of no attempt of Mr. Elliott to reach out to the owners in The Pines about transitioning to an owner controlled board. In fact, we have been informed that there have been no annual meetings or other communications required by the NH Condominium Act.

We have again attached the email we received from Christine Klimavich, a Pines unit owner who just sold their unit because of the dysfunction of MCC in properly operating The Pines as a lawful NH condominium entity, the gross lack of site completion, shoddy unit construction practices and, most of all, **fear of having The Pines turned over to the owners with "liabilities of unknown magnitude."** We urge the Planning Board to carefully read Ms. Klimavich's email to fully understand the operating practices of Mr. Elliott and MCC.

July 14, 2020 Letter from Ray Korber - KV Partners

In his comment letter, Town Engineer Ray Korber raised two issues on which we would like to comment.

First, Mr. Korber required written authorization of Attorney Shepard to represent Rick Elliott and Mt. Coolidge Construction.

FRPOA Response: Attorney Shepard is not licensed to practice law in New Hampshire. This is a public forum. If he represents Mt Coolidge or Rick Elliott as an attorney he is engaging in the unauthorized practice of law.

Second, Mr. Korber required written verification of who is legally responsible for the maintenance and operation of the stormwater facilities, and required that the applicant submit all legal documents that have been prepared to date that will enforce ownership and responsibility.

FRPOA Response: As explained in Bob McLaughlin's June 29 letter, and as reaffirmed by Attorney Rory Parnell's letter, Mr. Elliott has no legal authority to bind the owners in The Pines to do anything. Under the By-Laws for The Pines, Mr. Elliott was required to turn over

management to owners no later than 2018. Instead, he and the purported “Board” have continued to unlawfully assert control over the association.

Mr. Elliott’s assertion that his failure to turn over management of the association to the owners as required in 2018 has “been delayed due to complications caused by the pandemic” that arose in 2020 is laughable.

This is another example of Mr. Elliott and Mt Coolidge’s failure to comply with legal obligations that apply to them. It also shows his disregard for this body and the Town of Lincoln.

Conclusion and Request for Relief:

- FRPOA is not just an ordinary abutter. As referenced herein, FRPOA is likely to be the “owner” of these ponds at The Pines, whenever MCC finally chooses to annex The Pines properly.
- The Pines owners almost certainly have NO knowledge of Mr. Elliott’s letter binding them to maintain the ponds. Again, Mr. Elliott testifies in his own July 6, 2020 PB letter that he is transitioning The Pines over to the owners and that this process is delayed due to the pandemic?? **By this very statement he confirms the worst fears of his Pines Customers and validates our written July 6, 2020 claims regarding past repeated non-performance!** How can he “wash his hands” and transfer responsibility for The Pines to the “owners” when the roads, landscaping and drainage solutions are not complete and the last two buildings have not been permitted? While he was legally required to turn the governance of The Pines over to owners in 2018, this does not absolve MCC from its obligations to the owners and the association to properly complete the development. However, this “dump and run” tactic is exactly what we and the owners in The Pines fear. We suggest the Town and the Planning Board should be concerned as well.
- FRPOA has done everything in its power to provide the Planning Board with a better alternative to the MCC retention pond, one that will not only work better for FRPOA, but will work better for the Town of Lincoln and especially the residents of the Pollard Road area – a plan for which the only cost difference is the price of the gravel.

O.J. Robinson stated at the July 6, 2020 BOS Meeting, “water run-off has been an ongoing issue with Forest Ridge for many years and recommended that the Town look into whether or not they can request The Pines to submit a Stormwater Management Plan.” However, a Stormwater Management Plan is worthless without a good and workable stormwater control system. The Town should require construction of a stormwater control system which will be effective and be an asset, and not a blight on our community.

We respectfully recommend that you recognize FRPOA’s long standing commitment to achieve the best possible solution for both the Town and FRPOA, reject MCC’s current request and require that MCC build a Gravel Wetland. Again, a Gravel Wetland is the **only solution** that meets the goals of Forest Ridge residents as well as residents of the Pollard road area. It will provide:

- **Drainage efficiency and water quality**
- **Safety**
- **Aesthetic landscape beauty**

Regarding safety, we were disappointed to hear O.J. Robinson say in response to advice from the Town Attorney that so long as a town body cannot be sued if there is an accident or drowning, "why should we care" referencing the various safety options that could be deployed. We think the answer to Selectman Robinson's question is simple. Whether or not the Town can be sued, the Planning Board is morally bound not to approve a plan which is unnecessarily dangerous. We would like to think the Town of Lincoln cares about the safety of its taxpayers and visitors, irrespective of their full time or part time status and whether or not the Town can be held liable in court. The resort properties and their owners provide the economic vibrancy Lincoln enjoys, and the Planning Board should not allow a developer to "kill the goose that lays the golden egg."

In summary, we know this has been a long and contentious debate, and we appreciate that the Planning Board has taken more time at the July 15, 2020 meeting to discuss the benefits of a Gravel Wetland. As Mr. Korber pointed out, the drawings submitted for the hotel by Walsh Associates provide a detailed view of gravel wetland construction and directly contradict Mr. Shepard's disparaging descriptions as a "science project."

Proposed Solution:

In summary we restate our offer at the beginning of this letter. In the interest of achieving both the best solution and giving the Planning Board the confidence of a decision that will not lead to appeal or litigation, FRPOA offers the following:

If the Planning Board requires that MCC design and implement a gravel wetland to replace its proposed retention pond, FRPOA will agree to accept the long-term maintenance of The Pines stormwater control system under the following conditions:

- **MCC finishes The Pines (roads, landscaping, etc.) such that it becomes substantially complete as required by the Forest Ridge Declaration and properly annexes The Pines to the Forest Ridge Community.**
- **MCC establishes an owner-controlled board at The Pines. We agree to work with the owner controlled board regarding maintenance of the gravel wetland until such time as The Pines is lawfully annexed.**

Agreeing to implement a gravel wetland does not pose any unreasonable additional burden on MCC. The cost difference is mainly the cost of the gravel (crushed stone). Further, implementation of a gravel wetland eliminates the need (and cost) for either a fence or a submerged "bench." A gravel wetland is inherently safe.

Respectfully submitted as part of the July 22, 2020 Lincoln Planning Board Meeting testimony.



Harold Schofield
President, Board of Directors
Forest Ridge Property Owners Association
cc: Butch Burbank, Town Manager, Carol Bont, Town Planner

Attachment A – Email From Pines Owner Kristine Klimavich

From: Chris K <christinek@optimacompanies.com>
Subject: the pines
Date: July 18, 2020 at 6:15:23 PM EDT
To: Harold Schofield <hschofield@cox.net>
Cc: Doug Klimavich <dougk@optimacompanies.com>

Hi Harry,

Just wanted to reach out to you and update you where Doug and I stand regarding living in The Pines.

Back in December I had contacted you as you were president of the master association, because I had received a letter from Richard Elliot indicating The Pines would shortly be turned over to the owners. I knew enough to realize this was an important step and as an owner I needed to understand the legal implications of all of this. You, Bob and Dave were gracious enough to share with me the logistics and facts of how a condo association is typically formed starting from the building of the units to the turning over of the development to the owners via the creation of the junior association. After this meeting, I commenced educating myself on NH condo law. I dug into the specific details via the legal formation documents of The Pines. It didn't take too long to realize there were **multiple** violations of NH condo law regarding the Pines. To name a few- no annual meetings have occurred, no budgets, no balance sheets (reserves certainly were unknown) or results of operation, - essentially zero communication with the owners. At that point, I gathered together the owners of the Pines in January for a meeting to share what I had learned and to determine a course of action that would serve to protect our interest and investment. I was amazed to find out nearly all owners also had a punch list of items still needing to be completed to their individual units. The Pines literally had no areas of completion - the common areas were a mess, individual units were not complete and any upkeep on the older units (like restaining of decks) certainly on any schedule to be maintained. We decided that we would hire an attorney to assist us with the issues. A contract was signed and a retainer forwarded to our lawyer. Unfortunately the lawyer we hired was terminally ill and passed away shortly thereafter. His son, in the firm said he would be able to take on our case. Covid-19 hit shortly after. At that point I received a letter with a return of our retainer from the attorney indicating he wouldn't be able to handle our issues until at least August of 2020 and that we should consider getting alternative counsel if we wanted it done sooner. I communicated this to all owners. The owners were divided - some no longer wanted to engage an attorney and others did. I was very disheartened by this response.

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plantings in the landscaping are now dead, there is no mowing of lawns because there aren't any lawns just weeds (the people that are in the same complex as us actually purchased a lawn mower to take care of the "weed mowing" themselves). Additionally, we have witnessed the building of the units over the past three years - the construction of these buildings was done half assed- units were framed and then left open to the elements resulting in the wood being weathered, deteriorated and then simply covered with wood siding. Conversations with the workers affirmed the shotty work as well - we found out the previous owners of our unit insisted the siding be removed as black mold had developed and resulted in exasperated respiratory issues in their health! Essentially, when this association is turned over to the owners, they will be inheriting liabilities of unknown magnitude. Given our knowledge of all of this it would have been ludicrous to stay there! I am relieved the condo was sold and went through without a hitch this past week. Thanks to God-

I must say my eyes have been opened regarding condo issues. If we ever decide to purchase a condo again I certainly will know what questions and documents to ask for.

That is my unfortunate update - we definitely were saddened to come to the realization that selling was the only logical option. It is a beautiful area.

If you want to chat, please feel free to call.

All my best,

Christine

Planning

EXHIBIT C.

From: Rick Elliott <rickelliott3377@comcast.net>
Sent: Wednesday, July 22, 2020 5:13 PM
To: 'David Yager'; 'Heidi Barrett-Kitchen, Esquire'; 'Michael Shepard'; Planning; Jared Elliott
Cc: Dexter Drouin; Jared Elliott
Subject: response to FRPOA comments
Attachments: Response to FRPOA.docx; Order on Cross-Motions for Summary Judgment.pdf

Carole,

Thank you for forwarding the letter from the FRPOA.

We feel it is necessary to respond to you regarding the letter due to the number of untruths stated in the letter as fact, which they are not.

First and foremost, MCC contracted professional engineers to design a storm water solution for The Pines with the express intent that no additional water leaves the site beyond what has been leaving that site before The Pines was started. There was never any influence over the design by MCC or anyone associated with MCC regarding what type of solution is best, this was left solely up to the professionals. The only intent was to ensure that no additional water came off the site.

The design was engineered at significant expense, and was approved by NHDES while working with Mr. Korber the towns engineer to develop a solution that's meets the intent and all state and local requirements. This is the application that is before the Planning Board to approve.

The FRPOA cites to "downstream residents" but this has nothing to do with downstream residents. Again, the design of the ponds is meant to discharge no more water from the site than would occur had no construction taken place on the land.

Secondly, The Pines is already lawfully annexed. From the Court's Order on Cross Motions for Summary Judgment, dated 2/19/20 (copy attached):

"Because Article II of the Declaration sets forth a different method of amendment that does not require the Declarant to obtain the approval of the FRPOA, the court finds that Mt. Coolidge, as successor-in-interest to the original Declarant, has the right to unilaterally annex property to Forest Ridge. This interpretation of the Declaration is consistent with the Declarant's reservation of rights and avoids rendering meaningless the Declarant's right to annex property "[w]ithout further consent of the Association."

The FRPOA knows they are WRONG when they say that The Pines is not annexed to the Forest Ridge Community, but they continue to misrepresent that fact to the Board. And, is this even an issue the planning board should consider regarding the application before them.

Third, the FRPOA's allegations about The Pines Condominium Association, while irrelevant to this issue, are also totally false and baseless. A meeting was held with The Pines owners in early July, and they specifically requested not to take over the Association until construction was complete. Again, the FRPOA is lying to the Board. The Declarant has told the owners that NH law requires a board be established and tomorrow we intend to elect officers. We do admit that the December 2019 meeting was not held due to lack of interest and no

meeting g minutes were recorded. However, the association is recorded with the state and in good standing as well.

Also, the FRPOA continues to ignore the fact that the application, as put forward by MCC, is complete, properly designed, approved by NHDES, meets all local and state requirements and is ready for construction after town approval. Once the ponds is completed and the last 4 units are constructed the site will be landscaped and very little will needed to be done to maintain the ponds at The Pines.

Lastly, the FRPOA was primarily formed for the purpose of maintaining the roads, infrastructure and recreation facilities located within the master association at Forest Ridge. The pond situated at The Pines does not fall under the jurisdiction of the FRPOA. The status of the junior association is irrelevant to the purpose of maintaining the property within the pines. Per the declaration of the junior association is part of the landscaping responsibility of The Pines.

While it is interesting that the FRPOA has offered you a settlement of sorts they have never communicated this to MCC or others associated with this project.

Carole. please make sure the planning board has copies of this. I am sorry for not providing hard copy but due to the nature of the last-minute letter from the FRPOA it could not be helped.

Regards,

Rick Elliott

Mount Coolidge Construction

Carole,

Thank you for forwarding the letter from the FRPOA.

We feel it is necessary to respond to you regarding the letter due to the number of untruths stated in the letter as fact, which they are not.

First and foremost, MCC contracted professional engineers to design a storm water solution for The Pines with the express intent that no additional water leaves the site beyond what has been leaving that site before The Pines was started. There was never any influence over the design by MCC or anyone associated with MCC regarding what type of solution is best, this was left solely up to the professionals. The only intent was to ensure that no additional water came off the site.

The design was engineered at significant expense, and was approved by NHDES while working with Mr. Korber the towns engineer to develop a solution that's meets the intent and all state and local requirements. This is the application that is before the Planning Board to approve.

The FRPOA cites to "downstream residents" but this has nothing to do with downstream residents. Again, the design of the ponds is meant to discharge no more water from the site than would occur had no construction taken place on the land.

Secondly, The Pines is already lawfully annexed. From the Court's Order on Cross Motions for Summary Judgment, dated 2/19/20 (copy attached):

"Because Article II of the Declaration sets forth a different method of amendment that does not require the Declarant to obtain the approval of the FRPOA, the court finds that Mt. Coolidge, as successor-in-interest to the original Declarant, has the right to unilaterally annex property to Forest Ridge. This interpretation of the Declaration is consistent with the Declarant's reservation of rights and avoids rendering meaningless the Declarant's right to annex property "[w]ithout further consent of the Association."

The FRPOA knows they are WRONG when they say that The Pines is not annexed to the Forest Ridge Community, but they continue to misrepresent that fact to the Board. And, is this even an issue the planning board should consider regarding the application before them.

Third, the FRPOA's allegations about The Pines Condominium Association, while irrelevant to this issue, are also totally false and baseless. A meeting was held with The Pines owners in early July, and they specifically requested not to take over the Association until construction was complete. Again, the FRPOA is lying to the Board. The Declarant has told the owners that NH law requires a board be established and tomorrow we intend to elect officers. We do admit that the December 2019 meeting was not held due to lack of interest and no meeting g minutes were recorded. However, the association is recorded with the state and in good standing as well.

Also, the FRPOA continues to ignore the fact that the application, as put forward by MCC, is complete, properly designed, approved by NHDES, meets all local and state requirements and is ready for construction after town approval. Once the ponds is completed and the last 4 units are constructed the site will be landscaped and very little will needed to be done to maintain the ponds at The Pines.

Lastly, the FRPOA was primarily formed for the purpose of maintaining the roads, infrastructure and recreation facilities located within the master association at Forest Ridge. The pond situated at The Pines does not fall under the jurisdiction of the FRPOA. The status of the junior association is irrelevant to the purpose of maintaining the property within the pines. Per the declaration of the junior association is part of the landscaping responsibility of The Pines.

While it is interesting that the FRPOA has offered you a settlement of sorts they have never communicated this to MCC or others associated with this project.

Carole. please make sure the planning board has copies of this. I am sorry for not providing hard copy but due to the nature of the last-minute letter from the FRPOA it could not be helped.

Regards,

A handwritten signature in black ink that reads "Rick Elliott". The signature is written in a cursive, flowing style.

Rick Elliott

Mount Coolidge Construction

Planning

From: Harold Schofield <hschofield@cox.net>
Sent: Wednesday, July 29, 2020 3:35 PM
To: Planning; Ray Korber; Town Manager
Cc: Rory Parnell; Dave Larsen; Bob McLaughlin; Bob McLaughlin
Subject: July 22, 2020 FRPOA PB Meeting Follow up Concerning the Pines
Attachments: FRPOA PB 07-22-2020 Meetingt Follow Up -07.29.2020.pdf

Dear Carole,

Please see that all members of the Planning Board as well as Peter Malia get copies of this letter.

Thank you,

Harry Schofield
President, BOD,
Forest Ridge Property Owners Association (FRPOA)

**Forest Ridge Property Owners Association
174 Forest Ridge Drive, Suite 101
Lincoln, NH 03251**

July 28, 2020

Lincoln, NH Planning Board
Town of Lincoln
Lincoln Town Hall
PO Box 25
Lincoln, NH 03251

RE: FRPOA Follow-Up to July 22, 2020 PB decision to grant MCC's request to Convert The Pines Detention Ponds into Wet Retention Ponds.

Dear Planning Board Members,

As BOD President of FRPOA I must express our disappointment with the Planning Board decision last Wednesday to grant MCC their request to convert the existing detention pond into a wet retention pond. It means Forest Ridge as well as The Pines residents will have to live with the negative effects of standing water. That said, we cannot disagree with the rationale expressed by O.J. Robinson, that forcing MCC to build something they did not propose and have resisted will likely not gain Mr. Elliott's commitment for, and ownership of, the success of the outcome.

Also, we do appreciate the addition of the maintenance bond. However, we question its enforceability without a personal guarantee or an insurance policy. Just because you make the bond honorable by MCC successes and assigns doesn't mean successor LLC's will be financially solvent. And if MCC gets hollowed out and there is no successor and assign, that's even worse. This is especially true if The Pines becomes a "stranded development." Needless to say, we will be watching.

One point we did want to clarify, however, is that the summary provided by Rick Elliot of the lawsuit between Mt. Coolidge and the FRPOA in Mr. Elliott's letter of July 22, 2020 is blatantly false. Mt. Coolidge Construction moved for summary judgement on three issues:

- Arguing that the 2013 Amendment to the Declaration issued by FRPOA was invalid;
- Arguing that the 2015 Amendment to the Declaration issued by FRPOA was invalid; and
- Arguing that The Pines was properly annexed to the Forest Ridge Community.

FRPOA moved for summary judgement on these same claims.

The Court denied MCC their motions for all of these requests, and granted FRPOA's motion for summary judgement on the validity of the 2013 Amendment. Therefore, contrary to Mr. Elliot's claims, the Court has made no ruling on the validity of the annexation of The Pines. We expect the Court to schedule a trial date shortly.

Respectfully submitted,



Harold Schofield
President, Board of Directors
Forest Ridge Property Owners Association

cc: Butch Burbank, Town Manager, Carol Bont, Town Planner

EXHIBIT E.

Planning

From: Rory Parnell <rparnell@pmmlawyers.com>
Sent: Wednesday, July 22, 2020 3:43 PM
To: Planning; 'rkorber@kvpllc.com'; 'pmalia@hastingsmalia.com'; Town Manager
Cc: 'hschofield@cox.net'; 'Bob McLaughlin'; 'Bob Mclaughlin'; Diane Wieczhalek-Seiler
Subject: Lincoln Planning Board Meeting - 7/22/2020 - Hotel Driveway Permit Issue
Attachments: DOC072220.pdf

Importance: High

Good Evening,

Attached please find my office's letter of today's date in relation to tonight's 6pm Planning Board Meeting regarding the above issues.

Thank you for your time and consideration.

Rory J. Parnell
Attorney At Law
Law Offices of Parnell, Michels & McKay, PLLC
25 Nashua Road, Suite C5
Londonderry, NH 03053
(603) 434-6331
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PARNELL, MICHELS & MCKAY, PLLC

Attorneys at Law

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David M. Stamatis*

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William B. Parnell (1949-2020)*

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July 22, 2020

Town of Lincoln
Attn: Planning Board
148 Main Street
Lincoln, NH 03251

RE: July 22, 2020 Planning Board Hearing
Forest Ridge Property Owners Association (FRPOA) and Fairfield Inn Hotel Driveway
Placement

Dear Sir/Madam,

As you may be aware, our office represents Forest Ridge Property Owners Association (FRPOA), and we have recently been advised of the hotel driveway issue that is set to be heard at the planning board meeting on July 22, 2020. As FRPOA has identified in previous correspondence, it is their goal to get safety concerns addressed early in the process for the benefit of all FRPOA owners, its abutters, and the guests of the soon to be Fairfield Inn Hotel proposed by Kamlesh Patel d/b/a Green Woods LLC.

As you know, traffic studies are integral part of the early engineering process when designing any new commercial building, especially a hotel. This is due to the fact the amount of traffic, and more importantly, the increase in traffic, can create hazards for the local community. As a result, being proactive in identifying potential safety risks is imperative, especially in the early planning stages. As noted previously, Bedford Design Consultants submitted a report on behalf of FRPOA, which was dated October 18, 2019. This outlined concerns regarding the lack of a sight distance analysis, driver reaction time(s), tractor-trailer turning radii, and horizontal and vertical alignment of the hotel access drive as it relates to the existing divided entrance island and curvature of Forest Ridge Drive.

Bedford Design Consultants have also submitted the attached letter from July 17, 2020, which outlines similar concerns. Bedford Design raises continued concerns regarding stopping sight distance, in addition to stacking issues when exiting Forest Ridge Drive. FRPOA needs these safety issues addressed as they are the owner of Forest Ridge Drive and are responsible for its upkeep and maintenance.

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As of today's date, Bedford Design reviewed the Walsh Engineering plan that was just recently submitted. Bedford Design has identified additional issues regarding the ASHTO standard for sight line compliance. More specifically, the site distances shown on the Walsh plan meets the distance requirements, but they do not identify the height profile for each sight line. The ASHTO sight line compliance is that from each of the three sight lines, a person should be able to see an object at the sight line triangle apex (the driveway exit) no higher than six inches above the pavement. It was also pointed out that there was no stopping distance sight line analysis as part of the study. This would provide whether proper stopping distances are provided for. There were also concerns raised regarding whether the ASHTO site distance design meets ASHTO *all weather* standards. Since Lincoln is a ski town that receives a lot of snow annually, it is important to note that nothing over six inches above the pavement will be visible with the sight lines provided.

As noted in correspondence of July 8, 2020, FRPOA has the unlimited right to build, use and modify Forest Ridge Drive. These easements make it FRPOA's responsibility to "build, use and modify Forest Ridge Drive", and the grantor only retained the right to "travel" and to "locate, use, construct and repair necessary water, sewer and utility lines" over the FRPOA right of way. As such, the grantor did not retain any power to construct a driveway. I would expect that the grantor simply assumed they would have direct access to their property from Route 112. However, their possible mistaken expectation does not diminish the legal rights granted to FRPOA under the easements.

Additionally, construction of the proposed hotel driveway would permanently remove part of the raised fieldstone entrance planter and diminish the FRPOA property. It will also seek to place a crosswalk behind this, which is both dangerous, but also violates the recorded documents as noted above, and in more detail in the July 8, 2020 letter from FRPOA.

FRPOA is willing to work with the hotel on this process, but desires to keep the community safe for all residents of FRPOA, and moreover, the residents of Lincoln who use these roadways. There are significant safety concerns for the lines of sight where the proposed location of the driveway is planned.

There are also significant concerns regarding the location of the crosswalk. The pedestrians in a crosswalk will assume they are protected by the painted white lines of the crosswalk, but given the provided for sight lines, they are unlikely to be seen by motorists using the roadways. In addition, the proposed crosswalk is a mid-block crosswalk location. The NH Department of Transportation prefers not to use these types of crosswalks, as they often create a false sense of security for the pedestrian. They are commonly rejected by the Bureau of Traffic due to these safety concerns. When you add in the sight line issues, this construction has the potential for a significant incident where a pedestrian could be seriously injured or killed as a result of this plan. By adopting FRPOA's suggestions in their July 8, 2020 letter, these safety issues can be avoided.

Of paramount importance in these construction decisions is identifying potential serious risks, especially to pedestrians. While FRPOA would be open to moving the location of the driveway further down Forest Ridge Drive, they must also recognize that FRPOA has the responsibility of maintenance of Forest Ridge Drive. As such, the proposal cannot destroy the rights granted to FRPOA under the easements to use Forest Ridge Drive.

FRPOA simply put has the clearly defined right to "build, use and modify" Forest Ridge Drive. As part of that responsibility, they wish to be proactive in the planning process in pointing out the unsafe nature of the proposed driveway and crosswalk.

Please consider these factors when making your decision on this issue. If you cannot, FRPOA will have no choice but to seek appropriate relief to protect the residents of Lincoln and the owners of FRPOA.

We appreciate your time and consideration. Please feel free to contact me with any questions you may have.

Sincerely,

Rory J. Parnell

RJP

C: Forest Ridge Property Owners Association

Bedford Design Consultants Inc.

ENGINEERS AND SURVEYORS

177 East Industrial Park Drive, Manchester, NH 03109

Telephone: (603)622-5533 Fax: (603)622-4740

www.bedforddesign.com

July 17, 2020

Mr. Harold Schofield
Forest Ridge POA
174 Forest Ridge Drive
Lincoln, NH 03251

**RE: Lincoln Hotel Traffic Review
Forest Ridge Drive**

Dear Mr. Schofield,

As requested, Bedford Design Consultants, Inc. has reviewed the following plans and traffic report submitted by Kamlesh Patel d/b/a Green Woods, LLC for a new Hotel Curb Cut onto Forrest Ridge Drive.

- Site Plan Package dated October 2, 2018 last rev. 6/29/20
- Traffic Report dated Nov. 26, 2019

You should consider the horizontal and vertical alignment of the hotel access drive as it relates to the existing divided entrance island and curvature of Forest Ridge Drive.

- As stated in my earlier letter October 18, 2019, I strongly recommend that a sight distance analysis be performed for the proposed Hotel access driveway. The developers engineer should consider both Stopping Sight Distance on Forrest Ridge Drive and Intersection Sight Distance for the Hotel Driveway.
- The traffic study, although speaks to Level of Service of the Intersection, it would be helpful to know the vehicle stacking requirements at the exiting Forest Ridge Drive, this stacking should be sufficient as to not interfere with the Hotel driveway intersection. Even though the hotel intersection does meet the NHDOT minimum guideline there may be a vehicle stacking issue due to the high volume on NH112.

Thank you for retaining Bedford Design Consultants, Inc. to assist you on this project. Please let me know if you have any questions or need further assistance.

Sincerely,


BEDFORD DESIGN CONSULTANTS, INC.

George A. Chadwick, PE
Senior Project Manager