

**LINCOLN PLANNING BOARD  
REGULAR MEETING MINUTES  
WEDNESDAY, AUGUST 9, 2017 – 6:00PM  
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

**APPROVED**

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

**Members Excused:** Vice-Chairman R. Patrick Romprey, Callum Grant (Alternate) & Norm Belanger (Alternate)

**Members Absent:** None

**Staff Present:** Town Manager and Town Planner Alfred "Butch" Burbank, and Jane Leslie, Administrative Assistant (recorder)

**Staff Excused:** Planning and Zoning Administrator Carole Bont

**Guests:**

- None

- 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.*

*Vice Chair R. Patrick Romprey, Callum Grant (alternate), Norman Belanger (alternate) were excused.*

*Ron Beard was seated.*

- II. CONSIDERATION** of meeting minutes from:

- July 12, 2017

Paula Strickon objected to line 57 of the minutes, due to a miscommunication of Robinson's opinion.

**Motion approve the minutes of July 14, 2017 as amended a change to line 57.**

**Motion: John Hettinger      Second: Paula Strickon      All in favor: 5-0**

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

*None.*

- IV. NEW BUSINESS:**

**A. Administrator Carole Bont - Capital Improvement Program (CIP).**

Planning & Zoning Administrator Carole Bont pointed out in the CIP Report that some CIP items for the different departments are clustered together under the "Numerical List of Projects", but most of the items are not clustered by Department. The items that pertain to a particular department can be best seen by looking at the spreadsheet portion of the CIP report.

Bont pointed out in the CIP section for the Planning and Zoning Department, the money for

“Engineering” is set aside to be used for unanticipated engineering costs associated with town work, including subdivisions, zoning, or post planning and zoning. Chair Spanos asked if the Town would be reimbursed by the developer if the Town had to use that Engineering money. Robinson said no. Robinson explained that the money in “Engineering” is mostly for unexpected expenses caused by unanticipated events like flooding.

Bont said the funds are also set aside in the CIP to Update Town Master Plan and for the Village Center Riverfront Park. Robinson said the CIP Committee closely examines the CIP.

**Example of what might go into the CIP:** Bont explained the type of items that would go into the CIP. One example might be for updated zoning maps. If the cost to update all zoning maps by adding shoreline protection areas would cost more than fifteen thousand dollars (\$15,000) that item would go in the CIP. A lot of the recent development and anticipated future development will be along the shoreline of the East Branch Pemigewasset River. That is an example of an expenditure that should probably go in the CIP. Only certain classifications of water bodies are actually protected and those protected areas should be reflected on the zoning maps.

Bont gave everyone the approved 2017 CIP plan from last year and the worksheets that the committee is familiar with, as well as the updated spreadsheet that the Committee will continue to fill in for next year. Bont said one goal for the CIP Committee is to avoid any peaks or valleys in the tax rate. Another goal is to avoid any gaps in funding to maintain the Town’s infrastructure. Some projects have a 20-year life expectancy while others have a 30-year life expectancy. The Town needs to set aside monies a bit at a time for the different expenditures, balancing the needs and spreading out the cost to result in a more even tax rate.

## **B. Housekeeping Items**

Bont also wanted to mention a few housekeeping items the Planning Board might consider addressing at a meeting if they do not have any applications that require public hearings. These matters are supposed to be examined annually.

1. **Update Sign Ordinance:** Bont said the Sign Ordinance portion of the Land Use Plan Ordinance (LUPO) needs to be updated. Bont sent out some letters recently to people who popped up signs with no Sign Permits. A few have come in for the permits after receiving the letters, while others are not responding. Strickon said that the Mexican restaurant (Nachos Mexican Grille) has a flashing sign now and there is an “Open” sign that also flashes on Main Street (Thai 9). Bont said that the Sign Regulations part of the Land Use Plan Ordinance needs to be updated to be compliant with the US Supreme Court case regarding signs before the Town can fully enforce the Sign Regulations. See Reed vs. Town of Gilbert 576 US XXX (2015).
2. **Status of How to Address Permits for Retaining Walls and Their Relationship with the Stormwater Management Plan:** The issue of constructing State Building Code – compliant retaining walls dovetails with the issue of storm water management.

### **a. RETAINING WALLS:**

- i. Chair Spanos said the walls should have at least a one -foot (1') setback so the owners can service the retaining walls if need be.
- ii. Bont clarified the problem: individual PUD owners are applying for a Land Use Permit to cover their entire PUD (planning unit development) area with a house, and then want to build retaining walls to support the house on the common areas owned by the Homeowners' Association. At Coolidge Falls currently, all of the homeowners of all of the PUDs are members of the Homeowners Association. Each member of the Homeowners Association owns a percentage of the common area, but no one wants to claim legal ownership of the retaining walls.
- iii. Chair Spanos reminded the Board this is a legal question.
- iv. Town Manager/Planner Burbank said that it has become a circle of pointing fingers, and everyone is laying blame on others for these retaining walls. The staff needs Planning Board clarification. In the case of Coolidge Falls, it may not be possible to clarify the situation because the development was approved back in the early 1980s. We realize we need to enforce the State Building Code as it pertains to retaining walls if the height of these walls is four feet (4') or taller.
- v. Fire Chief Beard said Coolidge Falls is requiring homeowners to build retaining walls on the common land and the Coolidge Falls Homeowners Association is supposed to maintain the retaining wall afterward, but now that the Planning Board has raised safety concerns, the individual homeowners want to pass on legal responsibility to the Coolidge Falls Homeowners Association.
- vi. Fire Chief Beard said condo documents (Declaration & By-Laws) do allow the individual PUD homeowners to build these retaining walls on common land.
- vii. Robinson said that in his opinion, the Town needs to stay out of this disagreement between the individual PUD owners and the Homeowners Association. If someone comes in with a proposal to build a retaining wall, the person who wants to build a wall needs a permit for it.
- viii. Bont clarified the problem: the individual PUD owner comes in looking for a Land Use Permit or a "sign off" to build the house. The PUD owner needs a retaining wall to support the soil behind the house in order to build on the PUD. The PUD owner plans to build the supporting retaining wall on the common land. Now the PUD owner does not want to sign an Application for a Land Use Permit for their retaining wall. Does the Planning Board want the town staff to ask the applicant who wants to build a home for two (2) permit applications, one (1) for the house and one (1) separate application for the retaining wall?

- ix. Chair Spanos said that in his opinion the PUD property owners who builds a house should have two (2) separate permits because they are building on two (2) separate lots. Robinson agreed. Town Manager/Planner Burbank asked if the Planning Board agreed that one permit hinges on the other (meaning the owner cannot build one without the other) and the Planning Board gave assent.

**b. STORMWATER MANAGEMENT PLANS:**

- i. Bont said that the individual PUD owners who apply for a Land Use Permit to build a house are now saying that the Town should include the common land owned by the Homeowners' Association as part of their land so they do not need to comply with the Stormwater Management Ordinance. If the property owners disturb more than fifty percent (50%) of their lot or more than fifteen thousand (15,000) square feet, they need to submit a Stormwater Management or Erosion Control Plan. Instead of having the Town look at the size of their very small individual PUD lot and telling the owners they need a Stormwater Management Plan because they are disturbing more than fifty percent (50%) of the lot, the Town should be looking at the size of their very small lot PLUS all of the common land to determine whether they need a Stormwater Management Plan. Because the PUD owners would get to include the sizable common land, no PUD owner would ever need to submit a Stormwater Management or Erosion Control Plan because they would never disturb more than fifty percent (50%) of the PUD "the lot" to build a home and retaining wall.
- ii. Burbank gave an example of a house project right now where the owner will not be able to start building until next summer because "we've stuck to our guns." The owners do not want to comply with the Stormwater Management Ordinance. The property owners were all set to build their house, but the Planning Department staff said no – not unless they file a Stormwater Management or Erosion Control Plan.
- iii. Burbank said in another case, there was no one willing to sign off on a Construction Control Affidavit or take legal responsibility for the retaining wall so the Planning Department was unable to issue a Land Use Compliance Certificate. The Coolidge Falls Homeowners' Association has a rule that if you do not start construction on a home there before July 31, you cannot build because they do not want half-built homes sitting there over the winter, so now they have to wait.
- iv. "No matter what you do someone's going to challenge you," said Chair Spanos. Robinson insisted that the Town staff should not make any changes, but be proactive about letting the Homeowners' Association know that any house to be built up there needs a Land Use Permit, and any house needing a retaining wall needs a licensed engineer to "sign off on the wall" (i.e., sign a Construction Control

Affidavit that the wall was built in accordance with the State Building Code). We should be more vocal about it.

- v. Burbank said it would be very easy to end up with eight (8) permits on a plot and that is what clutters up the office, so it would be nice to consolidate permits for a house and the necessary retaining wall in one permit in the future. Chair Spanos said there is no reason why the homeowner cannot designate the part time owner as an agent for the Homeowners' Association. Burbank said that for the Town, we need a separate "sign off" to clarify who owns what.
- vi. Bont said if she has both the land owner and the Homeowners Association sign off as owners, she'll have to have two applications – one for the house and one for the retaining wall and Robinson agreed: the Town should have one application for the building on the building envelope, one for the deck that is built partly on the common land, and one for anything on common land.
- vii. Robinson said the Town has an ordinance for Stormwater Management that applies to the building of a house up there. There are two options: when someone builds a house, they can do the Stormwater study and figure out what they need for themselves, or the Homeowners' Association can do one for the whole development and make a Stormwater Management Plan for the whole development.
- viii. The Planning Board agreed they liked the two-permit package idea, where it comes in as a package and goes out in two parts. Robinson requested that the Town staff summarize the permit issue in a letter to send to the Homeowners' Associations.
- ix. Burbank injected the announcement that Fire Chief Beard has moved from Public Works and is going to do Code Compliance. Fire Chief Beard is already making headway on all codes the town has adopted, and he is getting noticed around town. He is working closely with Bont primarily, but health officer complaints that come in will go to him as the "face" of Code Compliance. Fire Chief Beard went up today and sent carpenters home from a property with no permit. The owner had thought since he had a conversation with Bont he could go ahead and start work. Fire Chief Beard's efforts at Code Compliance went over rather well and they agreed to stop working on the non-permitted property. Robinson said that consistency is very important with the Planning Board and addressing issues of code.
- x. The Planning Board talked about failed retaining walls and whether the property owners need a Land Use Permit to rebuild. Bont replied that if the retaining walls fail, they have to get a permit to rebuild. Chair Spanos asked if the retaining walls that support the house fail, do the owners need to take their houses down if they do not have enough land to build the retaining wall in compliance with the State Building Code?

- xi. Fire Chief Beard said that builders should start using a different method for building a retaining wall other than a stone boulder wall. He has discussed the problem the Town of Lincoln is having with boulder retaining walls with other firemen and the State Fire Marshal's Office. The State Fire Marshal's Office and some of the firemen he knows are surprised that people in Lincoln are still using stone boulders to build retaining walls because boulder retaining walls are not long-lasting and are prone to breakage.

### **3. Master Plan**

Bont said the Planning Board also needs to look at the Master Plan sometime this year and discuss it. There is a list of Planning Board items of what we need to discuss, (attached to the end of the minutes).

### **4. Review policy of approving private roads**

People often do not believe that roads are "private" roads. Plummer Hill Road is an example where this has been a problem.

### **5. Renewable Energy**

Robinson spearheaded this next conversation by saying that the Planning Board was requested to look at a couple buildings for solar panels and wind. He asked other member of the Planning Board, "Do we want to change the land use requirements relating to solar?"

Bont said a few others have already done this in their Zoning Ordinance like the Town of Warner. Other towns have included reference to renewable energy in their Master Plan, like Durham, Claremont, Hollis, and Lebanon. Robinson wondered how the Planning Board would handle more extreme examples, like a roof-mounted panel that sticks up ten feet (10') above roofline. Bont said there are fire safety issues if the solar panel arrays are installed improperly – not allowing space between panels for firefighter access. Fire Chief Beard pointed out that the fire code says no to an example like that. The State Building Code also limits the weight you can put on your roof. Strickon said you can buy solar shingles now from Tesla. Fire Chief Beard said that the solar companies should be keeping up on this technology because it's their liability that is at stake.

Bont recently denied a request for a seventy-two foot (72') long solar panel array because when she spoke with the Energy Analyst for the NH Public Utilities Commission (PUC) Sustainable Energy Division. The Energy Analyst said there was no way a solar panel array of that size was for a single family residence. It was probably for a commercial use. The appeal period has not run yet. The difference between this solar panel array and the one proposed by Paul Beaudin is that this solar panel array was not going to be erected in the setback areas. The larger solar panel array did not raise the same issue that Paul Beaudin's proposal had. However, the applicant did propose placing the solar panel array right next to the line of the setback. The proposed solar panel array was seventy-two feet long by eleven feet high (72'X11').

Robinson still thinks the Planning Board needs to discuss solar panel arrays more

deeply. What are the rules for ground mounted solar panel arrays versus roof mounted solar panel arrays. What are the height and size requirement? Should the requirements vary by zone?

Bont said she still has no completed applications for the second meeting this month, so perhaps the Planning Board could talk about solar at the next meeting or she could set it up for the second week in September. Chair Spanos said the Planning Board would prefer to group solar and wind as a grouping called “Renewable Energy” and discuss it in September.

#### **6. Increased Density for Workforce Housing**

Robinson said that when the Planning Board was discussing the Master Plan, they talked about changing the zoning ordinance (Land Use Plan Ordinance) to allow for increased density in the different zoning districts to enable the creation of workforce housing in all districts.

Chair Spanos said that he thought that should stay with the development of the Master Plan.

#### **7. Nonrelated Individuals in Same Dwelling**

Robinson also requested that the Planning Board look over the sections of the zoning ordinance (Land Use Plan Ordinance) that restrict the number of nonrelated individuals living in a dwelling in the rural or residential zones.

Chair Spanos said that in his opinion there is a problem with the current zoning ordinance (Land Use Plan Ordinance) because we are discriminating based on marital status. Bont said that limits on Board Houses are only applicable to certain residential zoning districts – Village Residential, General Residential, Rural Residential and Mountain Residential Districts.

This issue initially arose when Loon Mountain Recreation Corporation (“Loon”) put a dozen or more kids/employees in the same home in those residential districts. Bont said she still has ten years of zoning changes to investigate, but she’s almost finished with researching the changes to the zoning maps. A mistake was made when the zoning map was changed with no Town Meeting Warrant Articles to support it. The mistake includes the location of the Harrington house. So far it appears to her that the Harrington house is supposed to be in the Rural Residential (RR) District, but it is currently shown as being in the General Use (GU) District. When she fixes that part of the zoning map, that boarding house is going to present a problem. The Harrington house was the last residential home Loon bought before the Town became aware that this issue had become a problem. Chair Spanos asked if all occupants in the house leave, does that take away their grandfathering status? Bont said arguably the Harrington House as a boarding house was never grandfathered. The house was in the General Use (GU) District which is an “OK” zone. The house is currently in that same zone now until we fix it. The zoning map was mysteriously changed. This change could be a mistake or could be on purpose, as all of a sudden a small group of houses on the map were colored in as being in the “General Use (GU) District”.

Robinson asked if the Planning Board should we look at Section J Limit on Boarding Houses which says:

**Section J. LIMIT ON BOARDING HOUSES.**

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

Chair Spanos does not think Section J is enforceable. Robinson said he was the one who originally brought this section up for discussion after the subject was raised by Rick Kelly at a recent Board of Selectmen's Meeting. Robinson said if the section "Limit on Boarding Houses" is not enforceable we should take it out. Although that change might hurt Loon Mountain, who would want to live next to an "animal house" with thirteen (13) random people living inside?

Bont said that a boarding house is permitted in the Village Center (VC) District or the General Use (GU) District. Chair Spanos said if there are parties in a boarding house 24 hours/day and 7 days/week, that is a law enforcement matter, not a Planning Board issue. Town Manager/Planner Burbank agreed that Section J. "Limit on Boarding Houses" should probably be re-discussed. Bont said we should ask Town Attorney Peter Malia if the Boarding House restriction is legally defensible, and if not, there is no point in leaving it in. Robinson agreed this should be the Planning Board's first step.

**8. Underground Utility Lines**

Bont said that the CIP Committee did take the underground utility lines out of the CIP that have been there forever.

**9. Traffic Studies**

Bont said some people might not want a traffic study or count but a traffic study was an example of an expenditure that would go into the CIP. The study could concentrate on US Route 3 or Connector Road (US Route 3A).

Coincidentally, she is going to ask North Country Council to do a traffic count on US Route 3, Pollard Road, and Connector Road (US Route 3A). She said she was going to see if they could make it happen during the Highland games this year. A week long study would be good. They previously did a traffic count on NH Route 112 during the fall craft fair.



Robinson asked if it was the NH Department of Transportation (DOT) doing the traffic count. Bont said yes, North Country Council partners with the NH DOT to do traffic counts. NH DOT does not do the traffic counts. NH DOT subcontracts it out to the Regional Planning Commissions – our regional planning commission is “North Country Council”. We would like to coordinate a traffic count so that it coincides with the Highland Games in September. The Town Manager, Fire Chief, Police Chief, and Director of Public Works want to see how many people are using Pollard Road as a bypass road. Also US Route 3 is getting busier so they also want to see what is going on there.

Robinson said that Highland Games is an incredibly high traffic weekend, so if that particular weekend is listed on the NH DOT website, he thinks it would be a skewed number. There should be a baseline number as well. Bont said that the study would be all week, and the games are not all week so that should give a good mix of traffic data points.

Strickon asked if there would be construction on Pollard Road for the sidewalk at that point. Would that matter and would that affect the traffic study?

Hettinger said you would need more than a week. You need the weekend before or after the Highland Games to compare it to the Highland weekend. Robinson suggested a 10 day period. Strickon agreed because the prep for the Highland games starts the Wednesday before. They decided to schedule the study for Friday – Monday to get a crazy weekend and a baseline weekend. Robinson asked who was paying for the study. Robinson said if you go on the DOT website you can access these studies, so he will look that up online to find the previous study, because they go back 10-15 years with data.

#### **10. Municipal Water and Sewer Capacity**

Chair Spanos asked if the Town had enough municipal water and sewer capacity to accommodate all the new proposed developments coming into Lincoln. Town Manager/Planner Burbank said yes, right now we do. But the US Environmental Protection Agency (EPA) may possibly change standards for sewer lagoons.

Town Manager/Planner Burbank said that in the queue are the two lots next to the NH Citizen's Bank that are under a purchase and sale agreement. The individual who is or represents the buyer made it no secret that the two lots will become a flagship hotel (Hampton Inn) that will have around 80 rooms. Town staff gave him a list of things to consider, especially parking. We had several inquiries about the property up on Forest Ridge and at least one of those was for a hotel type complex as well, but the exact location is unsure. Over at the Beacon the proposal is that that property would become a big name hotel as well.

Hettinger wondered if the Common Man was still interested in putting up a thirty-three (33) unit place. Town Manager/Planner Burbank said Alex Ray has cooled off on the idea of putting up a hotel, but not on putting up a Diner in Lincoln on that parcel.

Strickon brought up last Christmas when Lincoln did not have enough water. Now, everyone is saying that we have had lots of water lately so everything should be fine,

but should the lack of enough water be a worry anyway?

In response, Town Manager/Planner Burbank said that the Town can draw water from rivers. Robinson said we also now have the Loon Pond Dam back in service. Strickon pressed the issue, saying that with at least one hundred ten (110) proposed additional hotel rooms, when all the taps come on at the same time, is the Town going to be able to handle that?

Town Manager/Planner Burbank said that at least one person has asked what the requirements would be for the storage tank. He said it would definitely help out to have half a million gallons of water on hand. The biggest unknown factor that would impact potential development would be if the EPA changed the rules on open source water.

Robinson said we could get into trouble by charging developers monies for taps we are not even sure they can use. Fire Chief Beard said if a homeowner is looking to build a place to a certain size, the Planning Board should consider whether to recommend an increase in the water and sewer tap fees to lessen the burden of a sewer lagoon update. We have got Phase II of Riverwalk at Loon Mountain coming up and the further development of South Peak Resort, so the Town potentially has a lot going on down the pipeline within the next ten (10) years.

Robinson said if all these places go in, as an estimate, how much money would that bring in water tap fees and sewer tap fees and what would the burden on the town be? The hotel wanting to go in across the river *was* approved, but there was some confusion as to whether those building permits have expired or not. Robinson somewhat clarified that the owners across the river had changed their plans from the Master Plan that had been approved by the Planning Board.

The water and sewage tap fees are meant to be used for expanding. Town Manager/Planner Burbank said that at some point the Town will start switching over to reading meters. When the Town does that, the Town will see instant water conservation. Fire Chief Beard confirmed that happened in the Town of Woodstock when the Town of Woodstock began charging its users for water.

Hettinger reminded the Planning Board that there will be huge flows for sewage taps/water taps on Fridays through Sundays because of the multitude of hotels coming in. He suggested that whoever does this study needs to be aware on the change from mid-week to weekends and holiday weekends.

- 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.

*None.*

**VI. ADJOURNMENT**

**Motion to adjourn at 7:13 pm.**

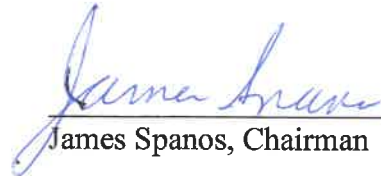
**Motion: Ron Beard**

**Second: John Hettinger All in favor: 5-0**

Respectfully submitted,

Ellyn Gibbs  
Recorder

Date Approved:

  
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James Spanos, Chairman