APPROVED

LINCOLN PLANNING BOARD
REGULAR MEETING MINUTES
WEDNESDAY, JANUARY 10, 2018 – 6:00PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH

Present: Chairman Jim Spanos, OJ Robinson (Selectmen's Representative), Clerk John Hettinger, Paula Strickon, , Callum Grant (alternate), Ron Beard (alternate & Fire Chief)
Members Excused: Vice-Chairman R. Patrick Romprey, Norm Belanger (alternate)
Staff Present: Town Manager/Planner Alfred "Butch" Burbank, Town Planner Carole Bont and Ellyn Gibbs (Administrative Assistant / Recorder)
Staff Excused: None

Guests:

- **Paul J. Beaudin II** – resident and property owner with Kathryn J. Beaudin of 2 Louis Lane, Lincoln, NH 03251 (Map 117, Lot 069), and Louis Lane (Road) (Map 117, Lot 069001-00-00000), PO Box 872, Lincoln, NH 03251-0872 and member of Zoning Board of Adjustment.
- **Taylor C. Beaudin**, resident, owner with Sarah H. Chandler of 8 Louis Lane Lincoln, NH 03251, representing uncle & business associate William Conn d/b/a Lincoln Trucking & Excavating LLC at 177 Connector Road, Lincoln, NH 03251-9720, representing property owners William Conn and Cynthia A. Conn.
- **Attorney Michael F. Conklin**, Conklin & Reynolds, PA, 264 Main Street, PO Box 849, Lincoln, NH 03251-0849, representing the Lodge at Lincoln Station Condominium Association, 36 Lodge Road, PO Box 897, Lincoln, NH 03251-9720.
- **Realtor Brenton (Brent) W. Drouin**, resident, 2 Hay Hill Road, PO Box 788, Lincoln, NH 03251-0788, and Realtor, Century 21 Mountainside Realty, 49 Main Street, Lincoln, NH 03251-0788
- **Dr. Mark Ehrman, Esq.**, resident, principal in Y Birch Kids, LLC, owner of 6 Yellow Birch Circle, PO Box 8, Lincoln, NH 03251-0008 (Map 121, Lot 039) which is in South Peak Resort and "Real Estate Developer".
- **Tamra Ham** – resident, 98 US RTE 3, Lincoln NH, 03251 (Tax Map 109, Lot 002) and Selectman for the Town of Lincoln.
- **Dr. Brian Holub DVM**, Countryside Veterinary Hospital, 289 Littleton Road, Chelmsford, MA 01824, and "Real Estate Developer" d/b/a Brian E. Holub 2011 Trust, whose addresses are: 10 Eagle's Nest Road, Westford, MA 01886, and 22 Liberty Drive #5B, Boston, MA 02210 and owner of 23 Hemlock Drive, Lincoln, NH 03251 (Map 121 Lot 001) which is in South Peak Resort. Investor in New Jefferson Holdings, LLC that owns LO Parcel 3 (Map 408, Lot 001), Pond Woodland Loop (M115 Lot 010), Woodland Loop LO (Map 114, Lot 0800001-00-00000), and Parcel 2 Forest Ridge (Map 115, Lot 017).
- **Jayne S. Ludwig**, resident, 12 Pleasant Street, Lincoln, NH 03251 (Map 113, Lot 092) and Selectman for the Town of Lincoln.

- **Scott McIntyre**, Assistant Property Manager for the Lodge at Lincoln Station Condominium Association, 36 Lodge Road, PO Box 897, Lincoln, NH 03251-0897, and resident of Woodstock, NH.
- **Myles Moran**, resident, 11 O'Brien Avenue (Map 117, Lot 024) owned by Mary J. Levitsky, 11 O'Brien Avenue, PO Box 184, Lincoln, NH 03251-0184 and owner of Udderly Delicious Ice Cream Shop at 121 Main Street, Lincoln, NH 03251, and Principal/Broker for Moosilauke Realty, 104 Main Street, North Woodstock, NH 03262.
- **Roy Sabourn**, Surveyor – Sabourn & Tower Surveying and Septic Design, PLLC, 70 Lost River Rd, North Woodstock, NH 03262, representing Jennifer (Jenny) A. Harrington, 40 West Street, Lincoln, NH 03251.
- **Jay Scambio**, new President and General Manager of Loon Mountain Recreation Corporation and Senior Vice President of Ski and Mountain Sports Operations for Boyne Resorts, and resident of Woodstock, NH.
- **Attorney Michael C. Shepard**, The Shepard Law Firm, P.C., 160 Federal Street, Boston, MA 02110 d/b/a Michael & Daryl Shepard Trustees, Shepard Family Trust, 15 White Oak Road, Newton, MA 02468 owns 21 Hay Hill Road (Map 130, Lot 075) and 19 Hay Hill Road, (Map 130, Lot 074) in The Landing Resort and "Real Estate Developer". Investor in New Jefferson Holdings, LLC that owns LO Parcel 3 (Map 408, Lot 001), Pond Woodland Loop (M115 Lot 010), Woodland Loop LO (Map 114, Lot 0800001-00-00000), and Parcel 2 Forest Ridge (Map 115, Lot 017).
- **Attorney Jill Zimmerman**, 10 Eagle's Nest Road, Westford, MA 01886 and 22 Liberty Drive #5B, Boston, MA 02210 and "attorney of 100,000 cases".

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.

Norman Belanger and Pat Romprey were excused. During the course of the meeting Chair Spanos made multiple attempts to contact Pat Romprey via telephone. Pat Romprey had asked to participate via teleconference, but each time Chair Spanos tried, the phone was patched through to voice mail. Callum Grant was appointed to sit.

II. CONSIDERATION of meeting minutes from:

- December 13, 2017

Motion approve the minutes of December 13, 2017 as amended.
Motion: Robinson **Second:** Strickon **All in favor: 4-0**

Paula Strickon abstained from the vote.

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

A. 6:00 PM: PUBLIC HEARING RE: PROPOSED CHANGES TO LAND USE PLAN ORDINANCE (LUPO) Draft Language available on town website & at Town Offices.

1. **Revise language for Current Height Restrictions for Buildings, including but not limited to:**

   Article VI District & District Regulations, Section B. District Regulations, Paragraph 7 Height Restrictions, add subparagraph c:

   c. Uninhabitable structures that are part of a tourist attraction are exempt from the preceding height requirements and are left up to the Planning Board as part of a site plan review. This includes ski lift towers and amusement rides and towers. The Planning Board may also increase the setback requirements for these higher structures on an individual basis as part of the site plan review process.

The Planning Board first attempted to phone Vice Chairman Romprey, but he did not pick up.

Motion to open public comment: Hettinger **Second:** Robinson **Motion carries.**

Public Input:

Jay Scambio, President and General Manager of Loon Mountain Recreation Corporation and Senior Vice President of Ski and Mountain Sports Operations for Boyne Resorts, began by informing the Planning Board that the lift installation height requirements are not determined by Loon Mountain Resort. The engineers behind the plans determine the heights of the lift towers; Loon staff members are pretty limited as to what they can do about the heights of lift towers. It is remarkable how a few pounds can influence the way a ski lift lies and performs. He requested that the Planning Board keep this in mind.

Strickon asked if Loon's position on the height limitation might lead to bringing a lift into town. For many years Dennis Ducharme who built the RiverWalk at Loon Mountain Resort has had plans to have a branch of the ski lift up South Mountain originate in or near the lobby of the RiverWalk at Loon Resort near the East Branch Pemigewasset River. Scambio said no.

Paul Beaudin said he still does not understand the Planning Board's reasoning for the proposed change, especially as to how it relates to the tourist attractions. In P. Beaudin's opinion, it would make sense to have a more definitive height restriction. If the Town does not regulate the maximum height with a definitive number, that will negatively affect people's property values, and possibly affect the character of the entire area. For example, the owners of Alpine Adventures had a whole host of problems when they first came into Town with their tourist attraction. Their abutters were often the ones raising issues. P. Beaudin asked the Planning Board members if they thought there was a conflict of interest because both Planning Board members Robinson and Grant feature tall tourist amusements in their businesses (Whales Tale, Alpine Adventures Thrillsville Aerial Park & BigAirBag Stuntzone and Clarks Trading Post) and could benefit from the proposed change to the zoning ordinance. Beaudin said, "I don't think letting this go unrestricted is the right thing to do because of past problems we've had."

Strickon asked Paul Beaudin to give the Planning Board examples of specific problems associated with heights at those tourist attractions. P. Beaudin said that neighbors to the Alpine Adventures were very unhappy with the noise resulting from the stunt ramp slide that Alpine Adventures put in. Strickon said that she remembered there were three (3) neighbors to Alpine Adventures who had noise issues with the slide. The Planning Board sent the abutters back to management, who made adjustments to their open hours schedule to reduce the noise in evening hours. Strickon said she is quite sure that the neighbors who left were somewhat satisfied. P. Beaudin disagreed. P. Beaudin said there was one neighbor who was promised a tree screen that

never happened. There was no after review. Strickon asked if this neighbor returned to talk to the Planning Board after that happened and P. Beaudin said yes, they did.

P. Beaudin said there should be a definitive number for a maximum height and the maximum height should not be left arbitrarily up to the Planning Board. Strickon questions whether one number would be suitable to fit all amusement towers, ski lift towers, and towers in general. P. Beaudin said yes, he thinks thirty-five feet (35') should be the maximum height of any structure in Town, "just like the law is now". P. Beaudin said if a taxpayer wants to create something higher than thirty five feet (35') they should be able to come and apply for a waiver from the Planning Board or apply to the Zoning Board of Adjustment (ZBA) for a special exception or a variance.

Strickon asked P. Beaudin for his definition of the word "taxpayer." P. Beaudin said he is a taxpayer, who is voicing his concern on the subject. He thinks it is inappropriate not to have a definitive maximum height limit for all structures in town. He asked why the Planning Board would recommend that an amusement be given an exemption from the height restriction, but would limit the height of a solar panel to twelve feet (12') high? Why should someone be allowed to build an amusement higher than a building? It does not make sense.

Jayne Ludwig said that in her opinion, the Planning Board's proposal to make changes to the maximum height requirement is frightening to those who live in the middle of a village in the mountains like she does. Property owners in the village do not want to have their view impeded by tall structures. Ludwig said she supports growth and has seen growth, but in her opinion the growth done in Town has not been done very well. She asked the Planning Board to consider the great trust taxpayers place in the Planning Board to protect their interests. Members of the Planning Board should be able to say, "I've considered where it will go and how it will impede the values of everybody's property." Ludwig said her brother is an alderman in his town. Ludwig's brother was visiting her and looked at Alpine Adventures' zipline; he asked Ludwig "How did that get there?" She said people who visit Lincoln notice the aesthetics. The development in Lincoln needs to be very well planned out so the development will not negatively affect tourism; tourists will not come to Lincoln if they see Lincoln is a cluttered and messy town.

Realtor Brent Drouin asked how this proposed zoning changes figures into the current zoning ordinance. Chair Spanos replied that "Tourist Attractions" would not be allowed in residential zones. They are allowed by right in the General Use (GU) District and in the Village Center (VC) District by Special Exception. In any zone where "Tourist Attractions" are allowed, the abutters would be notified as part of the Site Plan Review process. Site Plan Review would be required because adding another attraction would be a change or expansion of a commercial use. Drouin said he does not know how the Planning Board can "break that 35 foot threshold which applies to structures".

Bont said that members of the public made a good point. A maximum height restriction is easier to enforce if it is a straight, flat number, but some of what the Town may want is flexibility in the context of the process of Site Plan Review during which the abutters and members of the public can have input. Over the course of her time in Lincoln she has seen that input from abutters *does* influence the Planning Board's decisions. Site Plan Review is a process that allows for abutter input. Based on how the Site Plan Review process and the Variance process operate here in Lincoln, she does not see a significant difference between the outcomes from the Site Plan

Review process and the outcome from going through the process for requesting a zoning variance. Often times a project will have to have a variance as part of a Site Plan Review. It has been difficult to get the two (2) boards to come together to hold a Joint Planning Board and Zoning Board of Adjustment Meeting. In summary, a firm maximum height number is easier to enforce, but on the other hand, there are advantages for the Planning Board to have flexibility to decide whether to treat the maximum height of a ski lift tower the same as the maximum height of a house. Bont also pointed out that there is a whole separate section in the Land Use Plan Ordinance that pertains to cell towers, which allows cell towers to be much higher than thirty-five feet (35').

Realtor Brent Drouin said that in his opinion, if the developer is proposing a tourist attraction in a community where there are already standards in place for maximum building heights, a developer should not be able to exceed that required height. Drouin said the proposed height exemption for tourist attractions really does not make sense. If his property is located in the same zoning district as the person next door, why should the owner of the tourist attraction be allowed to build above that height?

Dr. Mark Ehrman, Esq., said, in response to the public comments, with due deference to Bont, the fact that abutters are notified does not take care of the issues as far as long term planning or general aesthetic values of the Town, so the point Ludwig made was well taken. There is a big difference between applying for a variance and having a general exemption. Pointing to the ski towers and the exact type of exemption proposed, there is a substantial difference between a ski tower and any other type of tourist attraction because people aesthetically recognize that Lincoln is a ski town. Creating a ski area does have engineering constraints that will change over time. Lumping ski towers and other tourist attraction structures together may not be the best way to proceed.

Robinson addressed the conflict of interest issue; according to the RSAs, the Planning Board has two (2) roles – one role is judicial and one is legislative. In the context of any judicial process that comes before the Planning Board like an application, if there is a member of the Planning Board who has a possible conflict of interest that member is encouraged to step down. On the other hand, if it is a legislative issue, which applies to this subject, there is no conflict of interest. The proposed changes to the zoning ordinance are changes that the Planning Board is just recommending should go to the voters. The Planning Board is not voting to adopt the change. In the end it is the voters who will decide whether to adopt the proposed changes, so the state law does not define that situation as a conflict of interest. Therefore, neither Callum Grant or OJ Robinson will be stepping down from the discussion about this proposed change to the zoning ordinance.

Robinson said, secondly, since 1985 this Town has followed pretty much what this proposed amendment to the zoning ordinance suggests and, thus, has been included in the Site Plan Review process. This ordinance represents the same process the town has followed historically, however, it just has not been written down. Since 1985 there have been numerous uninhabitable structures erected that have exceeded thirty-five feet (35'), because there is no "primary eave" to build to. All our proposed amendment is doing is putting into writing what has been the practice of this Planning Board since 1985.

P. Beaudin said that Whale's Tale, Alpine Adventures, and Clark's Trading Post all came in for review under that method from 1985. They notified their abutters, but the abutters had no

concept of what that end result was going to be, and they were displeased after that. Things have not changed since then. "I think the thirty-five feet (35'), which has served our town well since forever, should be the maximum height of everything."

Realtor Brent Drouin again asked why the Planning Board was considering changing the height requirements in this ordinance.

Robinson said that when people claim the maximum height limit for structures is thirty-five feet (35'), that is an incorrect statement.

> **Land Use Plan Ordinance, Article VI District and District Regulations, Section B. District Regulations, Paragraph 7 Height Requirements:**
>
> A. In the Small Business Development (SBD), Village Residential (VR), General Residential (GR) Zone the following height restrictions shall apply:
>
> 1. The maximum structure height shall be twenty-five feet (25') measured from the ground level to the primary eaves on the uphill side of the structure.
>
> 2. There shall not be more than three (3) floors used as living space above or below ground level as measured through any vertical plane of the building.
>
> B. In the General Use (GU), Village Center (VC) Rural Residential (RR) and the Mountain Residential (MR) Zones the following height restrictions shall apply:
>
> 1. The maximum structure height shall be thirty-five feet (35') measured from the ground level to the primary eaves on the uphill side of the structure.
>
> 2. There shall not be more than four (4) floors used as living space above or below ground level as measured through any vertical plane of the building.

Robinson summarized, by saying that the height requirement is thirty-five feet (35') to the primary eave on the uphill side. Robinson said there are buildings currently being built that are legally higher than the support poles at Alpine Adventures; those buildings are up to sixty feet (60') high, because their height limit is not thirty-five feet (35') total, it is thirty-five feet (35') to the primary eave on the uphill side. The property owners do not need waivers or special exceptions; they need nothing. Robinson said some members of the public who have spoken are trying to get these structures to be limited to the shortest possible height.

P. Beaudin said that the thirty-five foot (35') requirement was set in place for safety reasons, because the Town previously lacked big ladder trucks that could reach that high. He wants people to at least know the height limit and he thinks there should be a specific height limit.

Tamra Ham asked the Planning Board to clarify whether this proposed change to the zoning ordinance exempts any height restrictions for tourist attraction structures, but gives the Planning Board the ability to make decisions about height for the public in the context of Site Plan Review. Chair Spanos replied yes, the Planning Board has always had that right but this ordinance clarifies it.

P. Beaudin said he thinks a specific maximum height should be voted on; a maximum height for tourist attractions should not be left up to the Planning Board, because it does not leave the Town with any height restrictions.

Hettinger said that if the Planning Board recommended any specific number that could harm businesses in Town, so that a specific number for a height restriction will require some study. The wrong number could really hurt some businesses. We are all members of the Town and we do not want the Town messed up either. Like you, the Planning Board members want this Town to be a nice and vibrant place, so we are on your side.

Motion to close public comment: Hettinger **Second:** Strickon **All in favor (5-0).**
Motion to send as is to town warrant: Strickon **Second:** Robinson **All in favor (5-0).**

2. **Revise Language for Sign Ordinance, including Temporary Signs**

   Article VI-B, Lincoln Sign Regulations, Section E Permit Requirements and Review Procedure, Paragraph 10 Sign Classification and Standards, Subparagraph s. Portable Sign, Sub-subparagraph ii. Standards, sub-sub-paragraph (d):

   Modify the requirement to remove temporary signs when business is closed to when the business is closed for fourteen (14) days or more.

Chair Spanos summarized the ordinance, saying basically business owners will no longer be required to bring in their portable sandwich board sign every night, unless they are going to be closed for fourteen (14) days or more.

Motion to open public comment: Robinson **Second:** Beard **All in favor (5-0).**

P. Beaudin asked who would enforce this ordinance. Chair Spanos replied that Fire Chief/Code Enforcement Officer Ron Beard does enforcement.

Motion to close public comment: Hettinger **Second**: Robinson **All in favor (5-0).**
Motion to send to town warrant: Strickon **Second:** Hettinger **All in favor (5-0).**

3. **Regulation of Solar Panel Arrays**

   Add Article VI-D Solar Energy Systems. Solar Energy Systems of a residential size need Land Use Authorization Permit and must comply with the Land Use Plan Ordinance with regard to setbacks, height and other restrictions. Solar Energy Systems of a commercial size need Site Plan Review approval.

Motion to open public comment: Hettinger **Second**: Grant **All in favor (5-0).**

No public comment.

Motion to close public comment: Hettinger **Second:** Strickon **All in favor (5-0).**
Motion to send to town warrant: Strickon **Second:** Robinson **All in favor (5-0).**

4. **Require Approvals from Homeowners Associations and/or Condominium Associations prior to issuing Land Use Authorization Permits (LUP) per Town Attorney**

   Add to Article VII, Administration, Section B. Land Use Authorization Permit.

Bont said Ray D'Amante, who is an attorney and a member of the ZBA, thought this proposed amendment could be crafted better so he wrote a draft that he thought improved the proposed language and purpose of the amendment significantly. She had copies for members of the

audience and the Planning Board. She asked them to look D'Amante's proposal over and decide if they approved of his proposed changes.

Town Manager Burbank passed out copies of D'Amante's draft. (See attached Exhibit A.)

Hettinger said only comment he has is that there are a lot of people involved in homeowners' associations, and he thinks that the "thirty days for homeowners association" to get back to the homeowner seems too short. It would be tough to get everyone together.

Bont said that according to Ray D'Amante, the homeowners or condo owners who are members of the homeowners' association or condominium associations need a "safety valve," or some kind of homeowner due process. So if a homeowner applied to the association, those thirty (30) days would be the opportunity for them to go through with the homeowners review. It would be unfair for the Town to hold up the homeowner just because the homeowner's association is dysfunctional. These various homeowners' associations function very differently. Sometimes Bont just gets an email from a staff person saying the association has approved the proposed project. (This is usually a chain email that goes to all the members.) Town Manager Burbank said sometimes hired maintenance companies are the ones who handle all the communications for the homeowners associations or condominium associations.

Hettinger asked Bont if she thought the thirty (30) days was an adequate time period for association review. Bont said yes.

Chair Spanos said yes, that the Planning Board members would not want a homeowners association or condominium association to just sit on an application indefinitely to keep someone from moving forward with their project.

Robinson said the Planning Board also received an email letter from David Yager. David Yager is involved in the South Peak Resort Community Association, Inc. as well as in the recent development happening in Forest Ridge Resort. In reading Yager's letter and comparing it to D'Amante's, Robinson said he thinks that D'Amante's proposed revisions address a portion of Yager's concerns as well. Yager was concerned that there be published documents as part of the resort or community, which detail the building guidelines, standards and approval process for construction which owners have agreed as a condition for building in that community. D'Amante does include that it be written in the condominium bylaws. If it is in the condo documents or bylaws, that's what should trigger the necessity for approval from the association. Robinson said the Town does not want to start regulating or judging or interpreting what is in the bylaws or declaration from the association. If the document says that the homeowner needs approval from the homeowners association or condominium association, they will get it. Robinson said he thinks D'Amante took the gist of Yager's concerns without making it so the Planning Board has to interpret or judge those condo documents.

Bont read David Yager's email letter dated January 8, 2018, aloud to Board and public present. (See attached Exhibit B.)

Motion to open public comment: Beard **Second:** Hettinger **All in favor (5-0).**

Dr. Mark Ehrman, Esq. wanted to comment on Attorney and ZBA member Ray D'Amante's proposed language. To the extent that D'Amante addresses the issue of non-responsiveness, he thinks that is very reasonable, but the language does not cover all the public policy or conflict issues in the associations. It sounds like Yager is saying that all homeowners' associations are not equal and some have published rules that have been agreed to beforehand, while others do

not. Dr. Ehrman, Esq., wanted to add that there are public policy considerations that go beyond that. Despite the fact that South Peak Resort, for example, has published rules that have been agreed to prior to purchase or building, nevertheless, Dr. Ehrman, Esq., suggested the Planning Board take into consideration the previously passed recommendation on solar panels. The public policy of the State of New Hampshire, the US Department of Energy, and this Town is to recommend and encourage their adoption consistent with other rules of the town. If South Peak Resort Homeowners Association says that their association members cannot have solar panels while the Planning Board just voted on an ordinance that a homeowner can have solar panels, there is a conflict there. From a due process perspective, from a potential litigation perspective, the Town puts itself in a horrible conflict of interest by delegating this kind of power to homeowners' association. Dr. Ehrman, Esq., said he did not think any of the homeowners associations can be trusted with that kind of power. If the Planning Board wants to avoid binding the Town of Lincoln up with useless and expensive litigation, the Town should create some kind of statement in a policy paper submitted for voter approval that the homeowners' association shall not unreasonably restrict or deny the approval of a homeowner application. If you don't have this provision in your ordinance, the Town is "asking for it".

Chair Spanos said he understands, but he does not think that the Town can override the homeowners or condominium associations' bylaws.

Dr. Ehrman, Esq., said, "I don't believe that's the case. I personally would not like to have to test it, but if we had to we would."

Realtor Drouin asked where this issue was coming from. Town Manager Burbank said the Town has had a case that has involved this exact issue. The Town had a set of plans turned in which were not approved by the homeowners' association. The homeowner took exception, which violated the rules in our attorney's opinion. This issue has not been resolved. The Town staff believes this issue needed to be clarified to prevent it from happening again.

Dr. Ehrman, Esq., said that the proposed language does not speak to the reasonability requirement. **He urged the Planning Board to include a reasonability clause/requirement such as: "they shall not deny without good reason…"**

Townmanager Burbank said initially the Town was drawn into the trouble because there was a water and sewer tap fee and bedroom impact fee issue. Every time a bedroom or another bathroom is put in without our knowledge, the Town misses its opportunity to collect water and sewer tap fees and bedroom impact fees, which is the only means available for the Town to collect money to maintain the Town water and sewer system. For example, let us say a homeowner comes in and gets a Land Use Authorization Permit to build a three (3) bedroom and three (3) bathroom home, paying the tap fees and bedroom impact fees. Later, without submitting an application to obtain an additional Land Use Authorization Permit, the homeowner then renovates his property to include six (6) bedrooms and six (6) bathrooms. In this case, the homeowners' association included in their bylaws that this unfinished area could not include additional bedrooms or bathrooms without the homeowners association approval. The Town needs to be able to rely to some degree on these homeowners associations to get the correct info down here, just to run our town government. We do not have that in our rules, which is what we are trying to add clarification.

Dr. Ehrman, Esq., said the Town should have the same qualifications for reasonability and due process as the board of directors for the homeowners association.

Realtor Brent Drouin, said:

- He has been selling real estate in Lincoln for 18 years.
- In his opinion the Town "is just going to open up to a whole bunch of lawsuits because people own developments in this town and have paid a ton of money for it." For example, South Peak Resort (owned by CRVI South Peak TRS, Inc. c/o Duff & Phelps LLC, 919 Congress Avenue suite 1450, Austin, TX 78701) has listed their property for 17.5 million dollars. Drouin asked, who should have more to say about the homeowners' association than the people who own it?
- The Town has guidelines and there are bylines that have guidelines. To think that you can hand an association power to say what the homeowner can or can't do, there are people within associations that have built without approval – do you go and tear down that addition they built? There's a conflict. The Town needs to take care of what they're responsible for and the association needs to get it approved through the attorney general.
- The Town has to take responsibility for all infrastructure put in. It can't hold the builders responsible for the next thirty (30) years. The two (2) associations on the east side of Loon don't want to spend anything on the road that needs to be replaced. Taxpayers pay money for everything that goes on in town. The Town has to stop putting things on other people and leaving homeowners liable. The Board is not protecting homeowners in this way.

Attorney Michael Shepard said:

- He can see that the genesis behind this proposed amendment, but the problem is being caused by a single homeowner in a single association, with written bylaws dictating what can be built. Unfortunately the language the Planning Board has chosen is going to spill over and affect all kinds of things the Planning Board has not realized.
- Forest Ridge, for example, has been built in phases since 1988. There has been a condo declaration since then which gives the developer the rights to keep building the next phases without the input or veto power of the homeowners association. New Jefferson Holdings, LLC, now owns the Forest Ridge Resort and is building "The Pines at Forest Ridge". New Jefferson has seven hundred (700) acres, as well as two hundred-something (200+) building permits still outstanding under the original Forest Ridge Resort Master Plan. There is an argument that the language you have used would now give the Master Association of the Forest Ridge Resort the veto power over what is going to be built. The different phases means there are sub-associations or junior homeowner associations as well, so does this language mean you have to get an answer from your sub homeowners' association and the master? Which one?
- I'm one of the owners of New Jefferson through an LLC (New Jefferson Holdings, LLC), so I can tell you that the value of the property is directly tied to the ability to develop that property. If you give a homeowners' association the veto power, you have gutted the value that has been paid for that land. Now you are talking about due process legal considerations and absolutely inviting lawsuits.

- This language is too vague and ambiguous to give a real idea of what you are trying to accomplish. Look at D'Amante's comments and think about the public comments as well. You are opening a can of worms by putting the homeowners' association at the table with the Planning Board, creating a quasi-municipal agency. There have been comments about the lack of due process, and that is an issue. The homeowners' association is not bound by any due process to respond or not withhold approval. There is no recourse of appeal. A homeowners' association is a collection of people who are not the government, but who are looking out for the best interest of their people. We just do not have the ability to understand the nuances of permitting, zoning, and regulation. We know from experience these associations can be fickle, capricious, vindictive, and lazy.
- Shepard thought Hettinger's point was well taken in that thirty (30) days might not be enough to gather everyone. These people are largely checked out and a lot of them leave their homes to property managers who then manage their properties and turn over the profits. The courts can handle the differences between homeowners and their homeowners associations and the Town Planning Board does not need to insert themselves. By giving a seat to the association this vaguely and broadly, you are inviting trouble. I would strongly suggest against doing it at all, and if you are doing it, vet the language and parse it very, very finely, to make sure it addresses the exact problem you are trying to solve and make sure that problem is one you are supposed to solve.

Dr. Brian Holub DVM said:

- Brian Holub and his girlfriend Jill Zimmerman live at 23 Hemlock Drive, Lincoln, NH 03251 (Map 121 Lot 001)in the South Peak Resort. Holub said he has lived in this community for sixteen (16) years and been a member of NH Disabled Sports, which is his passion, for equally as long. He donates two hundred (200) hours a week to this organization and he is the president of the NE Disabled Sports Foundation. [Note: There are only 168 hours in a week.] As he loves the foundation deeply, he has decided to make Lincoln his retirement home.
- I'm telling you that I think this proposal is bad. Bad for the Town of Lincoln, bad for the residents of Lincoln, bad for trades and contractors who will be denied opportunities to build. It's very bad for developers. I am a developer of Forest Ridge Resort. Attorney Michael Shephard, who just spoke is my partner (in New Jefferson Holdings LLC). You are going to handcuff lots of development and diminish the value of developments that CCRs are already written for, because you are trying to override the conditions, covenants and restrictions which are already filed at Grafton County.
- [Note: A "CCR" refers to "Covenants, Conditions and Restrictions (also called CC&Rs) used by many "common interest" developments, including condominiums and co-ops, to regulate the use, appearance and maintenance of property.]
- You will not be put in the place of having to interpret whether a CCR or ARB document is the one to use.
- [Note: An ARB refers to an Architectural Review Board that does design review for new or remodeled homes in order to maintain the character, consistency and property values in an architecturally restricted development like Forest Ridge Resort or South Peak Resort.]

- You are opening yourself to a lawsuit from me. You are not really doing well for the homeowners of this town. Homeowners' associations are not your constituents – the homeowner is your constituent. They don't pay use fees, impact fees. I do! I want to pay those fees. The town should say "thank you," not "go back and get a letter from the homeowners' association." It will make it much harder to develop real estate. You are now putting a pseudo municipality between your municipality and me the homeowner to do what I want to do. You will create a smaller tax base because people will not want to build here if they need to go through this legal entanglement. You are creating the need for layers and layers of trouble.
- You're likely to put the town in the middle of land disputes and drive the legal expenses up dramatically. You are hurting taxpayers who want to develop their properties rightly and legally according to their CCRs, by allowing a homeowners' association the wrongful authority to interfere. I think you will create a reputation that this is not a town to build in. No one will want to deal with a town imposing that a homeowners' association grant permission for a developer who already has rights in a CCR to get a signature from someone?
- *Holub passed out "building process" copies to the board. (See attached Exhibit C.)*
- I submit to you your own current building process to get a permission from this Town to pay you money. This is someone coming to your town to pay you impact fees, sewer fees. You are now sending those checks back, because if you look at your wording on page 8. *Holub read*: "I understand that the Town will not enforce any private covenant that varies in any way from the Zoning Ordinance. Enforcement of private covenants is up to the party given enforcement rights under the declaration." I agree this is totally right, this is what the Town should be doing. It just gets the Town out of liability and lawsuit. I have 78 pages of private covenants that can be imposed on me just because I'm with a homeowners' association, and this Town does not want to get involved in enforcing private covenants. These are not the Town's responsibility. This statement is exactly what you want.
- However, on the second page of this document, now there is a later added statement which directly contradicts the previous page. It was added later to this document. "Is your property part of a homeowner's association or a condominium association? – Yes _- No" If yes, you will need written authorization of homeowners' association or condominium association with your application. You're barking up the wrong tree – scratch that!
- The Town should get as far away as possible from these legal entanglements. Homeowners associations' are usually just normal people making decisions that attorneys should be making, but they don't want to pay attorney fees. So now, even though my CCR says I'm allowed to remodel, you now say no, I am taking that right away from you.
- By the way, South Peak Resort does not have a homeowners' association. It is still in the "Declarant Control Period" and the declarant is a totally checked out owner. They have handed it over to some local people and I can't contact someone from the declarant who will grant me permission because there is no homeowners' association. So what does the Planning Board do with South Peak Resort now?

Dr. Ehrman, Esq., said:

- He and his wife send in their homeowners' association fees on time every month. We still get reminders from the South Peak Resort Homeowners Association, and my wife emails them back saying she has sent the check. They email back repeating that we need to send our fees. They cannot even collect garbage in their own properties. Basically they are incompetent and not good decision makers.

Dr. Brian Holub DVM said:

- Holub doesn't want to spend the money to fight for what he is already entitled to in his CCR. He said the constituents are the ones paying taxes and not the homeowners' associations. Why are you doing anything to empower someone who's not a constituent? How much power are you giving people who don't really understand the documents in front of them? May I propose that you strike the "Ownership" sentence from the above document. Don't ask for permissions from homeowners' associations because it is not relevant. Let private covenants be enforced by the owners of those covenants. They have a ton of power to stop something if they have a legal right, but then all the homeowners have to agree to pay the legal fees to do it. So now you have a reasonable voice of homeowners deciding what they want instead of 1-2 people or gatekeepers. I'm very frustrated by the language that's coming into this document.

Robinson said the Planning Board proposed this amendment with the intention to avoid some of the lawsuits related to us approving something that was not what the homeowners' association approved. What the Town approved did not meet their criteria and that was the kind of lawsuit the Town was trying to avoid. From the testimony, it sounds like by trying to solve one problem, we are opening ourselves up to more. I appreciate all this input from you and I have decided this ordinance is against the common sense of the Town. Why spend any more time on this if the Planning Board agrees?

Realtor Drouin said:

- He ran into an association on Loon Mountain, which is a condominium, where a very interested buyers bought furniture and all that, and then at the last minute the buyers were told they could not have short-term rentals. I told the buyers that and they backed off immediately. After that fell through, I hired an attorney to review the documents of the association, lo and behold they were forged documents by a previous president that were not recorded at Grafton County. When I called the attorney general, he said we have bigger fish to fry. This Town has no right whatsoever to give more power to an association that you have no control over. Would the Town tear down an addition built without permission?

Dr. Brian Holub DVM said:

- You will have to pay the fees for documents and pay an attorney thousands of dollars to interpret the document before you understand who's going to sign. If the wrong person signs it you're screwed, and if the right person signs it wrongly, you're also screwed. You have to be right in the crosshairs of the lawsuit. He reiterates frustration: I strongly encourage this board to revisit this idea and strike the second comment relating to homeowners' association. He's also wondering, was this statement brought to public hearing before this statement was added?

Chair Spanos replied that is an administrative document so they do not have public hearings.

Dr. Brian Holub DVM said:

- Right now, today, if there is an application in, you have no authority to be asking a homeowner to submit something from the association that will cost me thousands of dollars to get because this ordinance doesn't exist yet. This is opening yourself up to a lawsuit – by me. Wait until you figure out the right sentence to put in. If you have applications pending at town hall, I encourage the board to talk to the town administrators and get out of this mess. For many of these documents, you don't need another land use permit. You only use the land use permit tool so if I want to do more, I pay my fees. I don't need another land use permit. If I want to do something to the interior of my home, I just need the town to take my fees. There is not a separate building permit process right now.

Chair Spanos suggested they stay on subject.

Townmanager Burbank said, we have been threatened with a lawsuit tonight. Let us make no decision on this until we have an opportunity to consult with counsel. I think there were some very good points made, but Dr. Brian Holub said he is going to sue us if we proceed.

Chair Spanos suggested we wait another two weeks on it while we get due counsel.

Attorney Jill Zimmerman and her boyfriend Dr. Brian Holub DVM said:

- They worked very hard to be present and lost lots of money due to cancelled reservations and plane tickets and would appreciate it if the public comment period were to remain open.

Attorney Jill Zimmerman said:

- I've heard that this will really hurt tradesmen who rely on development in this town, and make it harder for realtors to sell. If you have fewer people wanting to move here, you have a lower tax base.
- I think we can all agree that this will increase legal fees by injecting yourself into a place of municipal process. You will be challenged on all sides. For full disclosure, I am a lawyer and I used to represent the banks in over 100,000 lawsuits, so I know that of which I speak. This puts the town in position of being named as a party unnecessarily. There are private covenants that deal with these matters.
- Bont had mentioned some homeowners' associations do not have write-ins. Sometimes it's the admins. You are in an impossible position if you put this wording in, but if you don't put this requirement in, you can let the homeowners' associations deal with their own problems. It's a really easy decision for the protection of the homeowners. Zimmerman asked if anyone in the room was in favor of this requirement.

No one replied, but Robinson said that Attorney Jill Zimmerman should be speaking to the Planning Board not the public.

Realtor Brent Drouin said:

- I am getting a lot of defensive posture from the Board, when the Board should be representing the public in front of them.

Dr. Brian Holub DVM said:

- He objected to the Town's putting off scratching the requirement.

Robinson said after hearing this, despite what legal opinion we might get, we are not ready to go to the town warrant with this. He was convinced fifty (50) minutes ago by the testimony tonight that the Planning Board should make a motion against putting this on the town warrant for this year.

Realtor Brent Drouin said:

- Even if Robinson was convinced fifty (50) minutes ago, the public should still be allowed to speak. He said it sounded like a very small issue that would prompt this broad of a requirement. He asked who hires the Town attorney.

Motion to close public comment: Hettinger **Second:** Strickon
Motion to send to the town warrant: Robinson **Second:** Hettinger
All in favor: (0-5). Motion defeated.

5. **Require Consent to Inspect to Application for Land Use Authorization Permit (LUP) per NH OEP**

Add to Article VII, Administration, Section B. Land Use Authorization Permit.

Bont said, this provision was something the Office of Strategic Planning recommended that municipalities put in their zoning ordinances. The Town has been inspecting the properties, but this language is just not included in the zoning ordinance.

Motion to open to public comment: Robinson **Second:** Strickon **All in favor (5-0).**

No public comment.

Motion to close public comment: Hettinger **Second**: Strickon **All in favor (5-0).**
Motion to send to town warrant: Hettinger **Second**: Strickon **All in favor (5-0).**

6. **Revise Criteria for Special Exception**

Add to and make revisions to Article VIII Board of Adjustment, Section A, Board of Adjustment, Paragraphs 1-4 so the ZBA can consider additional factors in determining whether to grant a Special Exception.

Robinson said Attorney and ZBA member Ray D'Amante had some good points in his letter dated January 8, 2018. (See attached Exhibit D.) The Planning Board is trying to say the ZBA can look at environmental constraints like floodplain, shoreline, etc. D'Amante is saying that the way this exception is worded means that the absence of specific words like "floodplain" ties the ZBA's hands. Our goal is to give them a broader scope of limitation not a more limited one. His opposition to the wording is correct. Someone could interpret that if there is any floodplain on this one hundred (100) acre parcel, the ZBA cannot grant a variance. There are wordings that need to be fixed. We should attempt to broaden the scope instead of restrict it.

Strickon agrees that the information came in two days ago, and we need to take more time to pay attention to D'Amante's comments because he is an informed member of the ZBA.

Motion to table discussion for two weeks.

Motion: Robinson **Second:** Grant **All in favor (5-0). Motion carries.**

Ludwig asked for a definition of "tranquility" for future revisions. Bont will take a look at that.

NEW BUSINESS:

A. Application for a Subdivision

Case #: SUB 2017-03 M112 L041 Harrington
Variance already granted in 2017 ZBA Var 2017-01 M112 L041 Jenny A. Harrington

Location: **(Mobile Home)**
40 West Street
(Map 112, Lot 041)

(Land & House)
36 West Street
(Map 112, Lot 041)
General Residential (GR) District.

Property Owner:
Estate of Barbara Harrington
36 West St.
Lincoln, NH 03251

Heirs: Jennifer (Jenny) A. Harrington & David Harrington
40 West St.
Lincoln, NH 03251

Applicant: Jennifer (Jenny) A. Harrington
40 West St.
Lincoln, NH 03251

Applicant is proposing a minor subdivision of one lot (Map 112, Lot 041) into two lots. Both lots are fully developed already with two (2) dwelling units on the subject lot. Applicant proposes to subdivide the subject lot (36 & 40 West Street) (Map 112, Lot 041) into two lots so the mobile home (40 West Street) and the Harrington house (36 West Street) are each on their own lot. Historically, the subject lot was two (2) lots that were later merged. No additional streets, utilities or public improvements will be required.

The property owner is the Estate of Arthur & Barbara Harrington, c/o David A. Harrington, Executor, 31 LaBrecque Street, Lincoln, NH 03251-9801). David A. Harrington and Jennifer A. Harrington are heirs.

The subject lot is located in the General Residential (GR) District. The minimum lot size in the GR District is 10,000 square feet with the one of the proposed lots being 7,570 square feet; the second lot proposed would be 12,893 square feet. The subdivision needed a variance as specified in the Land Use Plan Ordinance, Article VI (District and District Regulations), Section B (District Regulations), Paragraph 4 (Dimensional Chart) to create a lot smaller than the minimum lot size. The Applicant's Request for a Zoning Variance was granted by the ZBA on November 14, 2017.

Presentation:

Surveyor Roy Sabourn presented the survey of the proposed subdivision to the Planning Board, representing Jenny Harrington, the applicant.

Sabourn explained that Bont had been helping Jenny Harrington with this project. One point that Bont put in the summary was a bit incorrect, as she called it two lots. There was a front portion and then an addition to the back, but it was never really two separate entities. The land has been used as two separate dwellings. Yes, there are twenty thousand square feet (20,000 sf) plus a whisker which meets the minimum lot size requirements for a subdivision into two (2) lots of ten thousand square feet (10,000 sf) each. The Zoning Board of Adjustment (ZBA) saw fit to grant Harrington a variance, so we have one lot that is less than the minimum lot size and one lot that is larger than the minimum lot size, however, the usable area for each lot works best this way. The ZBA saw that the uneven split made common sense and granted the variance.

Chair Spanos asked if these lots had ever been involuntarily merged.

Sabourn said the merger of the lots happened long before that term was created. There were never two separate entities per se. As Bont pointed out, there are no changes in anything on the ground – no change to the driveways, water or sewer or electrical hookups. The two homes are already well established. However, the survey presented to the Planning Board looks "funny" because West Street looks like it is on private property; it is. When the Town worked on West Street many years ago, the roadway should not have been done this way, but the lines here on the survey truly represent how the surveyor believes the land has been deeded. Sabourn said he is asking for a basic subdivision. Jenny lives in the mobile home and she wants to continue to do that. She and her brother have decided the big house should be sold.

Town Manager Burbank asked Sabourn if he believed that West Street should be drawn somewhere else on this map? Sabourn said that yes, the deeds match what he is showing on the survey, but West Street should be put back in the right of way as shown on the survey. At least three deeds make up West Street, from back in 1957; that is where they got their information to create the survey. There is an issue there and before you put infrastructure money into fixing West Street, maybe the Town should tweak some things to make it work. That survey shows physically where the street lies, but West Street is not located where the paper trail says it should be.

Robinson asked Sabourn if the heavy black line (i.e., the Harrington apparent deed line) was the extent of the easement. Sabourn replied yes; the Harrington apparent deed line on the ground marks their property boundary line. However, the street had already been deeded to the Town, a few months prior to the deed to the Harringtons. The same gentleman drafted and signed both conflicting deeds; the street has a senior deed.

Motion to open public comment: Grant **Second:** Strickon **All in favor (5-0).**

No public comments were made.

Motion to close public comment: Grant **Second:** Hettinger **All in favor (5-0).**
Motion to approve as presented: Strickon **Second:** Hettinger
Motion carries (5-0), Planning Board signed documents.

B. Application for a Subdivision and Site Plan Review

1. **Subdivision to divide a portion of the common area of the interior of the condominium/condotel known as the "Lodge at Lincoln Station" into three hotel rooms; and**
2. **Site Plan Review approval 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. These three hotel units will not have cooking facilities and will not be "condotel units" like the other units in the Lodge.**

Applicant/Property Owner:

1. **Agent for Applicant, Attorney Michael F. Conklin, Conklin & Reynolds, PA, 264 Main Street, Suite 14, PO Box 849, Lincoln, NH 03251**
2. **Walter Reed, President of Lodge at Lincoln Station Condominium Association, Inc., P.O. Box 897 Lincoln NH 03251**
3. **Surveyor: Thaddeus Thorne-Surveys, Inc., Center Conway, NH 03813 (Survey is dated 7/11/1983, last revised on 5/6/1985.)**

Although Applicant has submitted an application for Subdivision and Site Plan Review, Applicant is also requesting a waiver of the requirement for a subdivision as well as waivers for several requirements for Site Plan Review.

The property is located at 36 Lodge Road, (Map 117, Lot 121). The area is question is the common area between Building A & Building B. The property is located in the General Use (GU) District).

Portions of the Lodge were constructed in 1985 prior to the adoption of the zoning ordinance known as the Land Use Plan Ordinance (LUPO) in 1986. Zoning was adopted on 3/11/1986. Applicant submitted the recorded Plan #3686 dated "received" on 9/26/1986 by the Planning Board, but recorded the day before on 9/25/1986. In the title box of the recorded plan the Lodge is described as a "Condotel".

Copies of these applications will be available for review at the Planning Office, Lincoln Town Hall, 148 Main Street during normal business hours Monday – Friday 8:00 AM – 4:30 PM prior to the meeting date.

Upon a finding by the Board that the applications meet the submission requirements of the Land Use Plan Ordinance, Subdivision Regulations and Site Plan Review Regulations, or that waivers are warranted, the Board will vote to accept the application as complete and a public hearing on the merits of the proposal will follow immediately. Should a decision not be reached at the public hearing, this application will stay on the Planning Board agenda until such time as it is either approved or disapproved.

Presentation:

Attorney Conklin, representing the Lodge at Lincoln Station Condominium Association, Inc., said, he had two (2) applications, one for Site Plan Review and one for Subdivision. The plan he thinks was helpful to look at was attached to the application for Site Plan Review. It exhibits Buildings labeled A, B, and C.

Attorney Conklin spread out floor plans.

Attorney Conklin told the Planning Board to look at exhibit B on the application to see the spaces marked A and B on the first and second floor and the space marked space C on the third floor. Those spaces have historically not been used for anything substantive – mainly storage and ski lockers. If you look at the third drawing, labeled exhibit C, this is a sketch prepared by Scott McIntyre that shows what this space will look like when it is made into a room.

Attorney Conklin said that Bont and he had a discussion about whether he needed a Site Plan and/or a Subdivision Plan. He thought they did not need subdivision approval, because this is common area and it is going to remain common area. The only difference is that there will be a bathroom and a room in addition to a ski locker room. He has still complied with the request to submit for a subdivision. He pointed out in his letter that on page 2, the quote from declaration in covenants, gives the homeowners' association the authority to do what it wants within the common area. The change of use in this area has been approved by the association.

Attorney Conklin said, statute RSA 356-B:20 regulates what is required in site plans and floor plans. This goes to the issue of whether any sort of plan should be recorded. He has gotten copies of Section 20 of the Condominium Act. The Condominium Act has four (4) sections. The first section addresses site plans, the second section addresses floor plans. The Condominium Act does not include a requirement to have a floor plan of common area.

Planning Board Questions:

Strickon asked for clarification: you will be renting these out as hotel rooms? Attorney Conklin said yes, the hotel rooms will be rented out by the association and the revenue will go into the association's coffers.

Chair Spanos said the first thing we need to decide is whether it is a subdivision or not. If it is a subdivision, we would need fifteen thousand square feet (15,000 sf) per unit.

Bont said the Planning Board has a copy of the memorandum about legal opinion that Steve Buckley (NH Municipal Association Attorney) gave us which was agreed with by the Town Attorney. Bont said that Attorney Conklin respectfully disagrees with this opinion.

Bont said there is also the issue of what does the Town record if the applicant does not prepare a Mylar survey.

Attorney Conklin said that he is not adding anything to the space and they already own the space. They are going to continue to own it, so there is no division. There is no new owner, no subdivision. From the subdivision ordinance, subdivision is defined as splitting a lot into two or more.

Fire Chief Beard said it will have a change of use from common area, which is non-revenue generating space, and they are looking to change it into space that generates revenue.

Bont said once converted the space will no longer be available to all who own the other units as it will no longer have a common area function.

Attorney Conklin said that it would be similar if you chose to rent out a function room for meetings. He thinks they should retain the right to rent out their common areas in whatever way they saw fit. It should not be labeled a subdivision or require a Site Plan Review.

Robinson said, what if he was proposing changing it into a game room (the space would still be revenue generating)? Or a restaurant? What is the difference? Would that be a subdivision or change of use?

Grant said although there is a change of use, he does not see it as a subdivision unless it is sellable as a unit.

Bont asked, realistically, how will the Town keep track of that? How will the Town know that the condominium association is not going to sell the units. The big recorded floor plans say they have one hundred forty (140) units. The program that generates our abutter notices said they have one hundred thirty-five (135) units. The tax assessment cards say they have one hundred sixty-two (162) units. Right now the Town is taxing one hundred sixty-two (162) people for units, but there is nothing else that tells me how many we have because these units are so difficult to track over time. The recorded plan Attorney Conklin passed out to the Planning Board says they have one hundred forty (140) units when they recorded the plan, but now there are one hundred sixty-two (162) taxable units. What about the concern about adequate parking spaces? I don't know how many parking spaces there are but that is a requirement as well for a Site Plan Review approval. How did the Lodge at Lincoln Station go from one hundred forty (140) units as recorded to one hundred sixty-two (162) units without either Subdivision or Site Plan Review approval?

Attorney Conklin said possibly the C and D wings could have created the additional units that were not recorded. He does not know whether A&B or C&D were recorded first.

Chair Spanos said we need to determine whether it's a subdivision before moving into the site plan. Bont read the definition of Subdivision.

> **Subdivision Regulations for the Town of Lincoln, New Hampshire**
>
> **Section 3 Definitions**
>
> 3.38 **Subdivision:** Shall mean the division of a lot, tract or parcel of land into two or more lots, plats, sites or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease condominium conveyance or building development. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. The division of a parcel of land held in common and subsequently divided into parts among several owners shall be deemed a subdivision.

Grant said you are not subdividing property; it does not concern property. Chair Spanos said if we took this idea too far then hotels would become subdivisions.

Grant said the water/sewer, parking, and occupancy will be a factor in this project, it would make sense to require a Site Plan Review.

Strickon said she thought these units already had water/sewer?

Fire Chief Beard said that the water and sewer lines were capped off in the concrete. They already cut the concrete slab in the first floor, but there was previously no bathroom. He said their original plan must have been to outfit every room with water and sewer.

Robinson said he read previously that there was an existing bathroom in the basement with a working tub or shower. Is that still the plan? Attorney Conklin replied yes.

Fire Chief Beard said that was a different type of shower - an employee shower. They were looking to take that employee shower out and get the credit for the water and sewer tap fees to offset the cost and apply the credit to the three (3) new units. The fee was going to be so much that they were looking for a way to combat it.

Motion that these units will not be considered a subdivision.

Motion: Robinson **Second:** Grant **All in favor (5-0). Motion carries.**

Moving on to site plan review:

Attorney Conklin said:

- I hope the Planning Board will not need a Mylar recorded because the common area does not need to be shown on the floor plan according to RSA 356-B:20. The three (3) common areas actually are shown on the floor plan. I thought if you approved this project, the sketch of the bathroom would be good enough to keep a record in the office. I have spoken to the Grafton County Registry of Deeds about recording the plan. We were talking about modifying the floor plan to show the hotel room, but they will not take anything but a Mylar. A Mylar would be very expensive and time consuming for us and seems like, and I don't think it would be more effective than my sketch.

Grant asked what would happen if the whole structure came up for sale. Then you would have a differential between the plan and what's actually on the ground.

Attorney Conklin said everyone owns an undivided percent interest in the common area. It is not realistic to think that sale could ever happen because you would need to get every owner to come together and agree to sell.

Bont said that sale is possible. For example, the tennis clubs across the street from Loon (in the Bartlett buildings) have been converted into rentable housing units without a proper Site Plan Review. Those areas were supposed to be common areas. You may not think you can get one hundred people together to sign a deed and hand it over, but it's possible.

Grant said, if you record an informal drawing here in the Town Office that is not the same as the filing recorded drawings at the Grafton County Registry of Deeds, you will create a discrepancy. Whose plan is the better authority?

Attorney Conklin said his drawings only differ from the earlier recorded plans in that there is a partition for the bathroom. He said he believes Bont is trying to protect these units from morphing into a more permanent residence than a hotel room. But, you would have the same problem with a Motel 6. How do you know people are not practically living in those rooms?

Bont said she just wants a clean way to record these units; she wants to have something to record so the unit count, the location of the unit and any restrictions placed on the unit are clear and accurate.

Chair Spanos said it is not an issue of sneaking in dwelling units; it is probably just bad counts.

Attorney Conklin agrees, but said he does not know for sure. He said he can get the answer to that question and figure out how to account for all units. At one time, there were two (2) doors in one unit and people tried to combine that unit. Bont said that looking at the various unit numbers it appears that there are some combined units. Attorney Conklin thinks they were trying to make a lockout room, perhaps, without calling it a separate unit? But he thinks that has all been neatened up and they are all single units now.

Robinson said that it seems to him that the recorded plans of the whole building are the problem here, not whether these single rooms are worthy of being rented separately. Robinson suggested, what if we make a condition of the approval with the association, that they supply us with the complete plans for the building that account for all the units, and they show us there is enough parking spaces per unit? Members of the Planning Board agreed.

Bont said that this is adding onto a pre-existing, nonconforming situation, both in the number of square feet required per unit and the number of parking spaces. The condos are supposed to have two (2) parking spaces per unit. Hotel rooms only need one (1) parking space per unit. Time shares only need one and one quarter (1.25) spaces per unit. Are we saying we need one (1) space per unit for the condominium units that are already there, or whatever requirement was in the old days before zoning, one parking space per unit was enough back then so all we need is one per unit?

Chair Spanos said, they do have some larger lodge units? Attorney Conklin said yes, but they vary.

Attorney Conklin said Robinson's suggestion of a condition is fine. The condition suggested was that as a condition of the approval with the association, they supply us with the complete plans for the building that account for all the units, and they show us there is enough parking spaces per unit. Imposing that condition would keep him from misrepresenting the number of parking spaces. Scott McIntyre took photos and Conklin has counted about two hundred fourteen (214) parking spaces using those photos. Attorney Conklin said he personally looks over the parking lot every day from his office at The Depot and there are chunks of the parking lot that never see a car.

Planning Board took a few minutes to gather around and examine plans further.

Robinson said:

- They will also have to put in a window as a second means of egress if it is a living area.
- In a parking situation, our ordinances are based on a type of ownership rather than a type of unit. For example, if I condo-ed a motel, I'd have to double the parking even though the capacity is not any greater.

Bont explained the reason for this: if you are coming to a hotel as a couple, you are probably coming with one (1) car. If you are living somewhere as a couple, you probably will each have one (1) vehicle there for a total if two (2) cars per unit.

Robinson said maybe we should be judging parking type on use, not the type of ownership.

The Planning Board looked at Article V.A. Definitions for Residential parking requirements.

ARTICLE V
GENERAL REGULATIONS

Section A. ***PARKING AND OFF-STREET LOADING.*** Adequate off-street parking facilities (municipal parking facilities excluded) for employees as well as customers and off-street loading facilities shall be provided whenever a new use is established or any existing use is enlarged in accordance with the following specifications:

1. All new construction of institutional, commercial or industrial uses requiring off-street loading facilities shall provide such facilities so that delivery vehicles are parked off the traveled way.
2. All proposed new construction shall provide for adequate off-street parking spaces in accordance with the following standards, subject to modification by the approval of a special exception pursuant to Article V, Section A,3. A single parking space is defined as being one hundred seventy (170) square feet in area and having additional adequate area for maneuvering.

a. Residential (including dwellings, timeshare units, quarter share units or other similar types of occupancy as determined by the Planning Board) – two (2) spaces for each residential unit.

b. Accessory Apartment – One (1) space

c. Hotel, Motel, Tourist Accommodation, Lodging Unit – one (1) space for each unit.

d. Timeshare units – 1.25 spaces per unit

e. Commercial – one (1) space for each three hundred (300) square feet of public area.\

f. Industrial – one (1) space for each two (2) full-time-equivalent employees on the premises at one time plus a factor of five (5) percent of that requirement to accommodate visitors, etc.

g. Restaurant – one (1) space for each four (4) seats.

h. Public Assembly – any theater, hall or auditorium, provisions for at least one (1) space for each six (6) seats.

i. Where one (1) building is used for lodging or motel accommodation with a restaurant – one (1) space for each rental unit, plus one (1) space for each four (4) seats.

j. Where the development will provide for mixed uses, including residential units, the Planning Board may waive the two-parking space requirement per residential unit and only require one additional space per residential unit, if the Planning Board finds that the off street parking proposed is adequate for the intended use and substantially meets the purposes of this ordinance.

k. Auto Service Stations – 3 spaces per repair bay for customer's cars plus 1 space per bay for employees. These spaces must be provided on site.

Bont suggested that the Planning Board characterize the number of parking spaces at the Lodge at Lincoln Station Condotel as a pre-existing, nonconforming situation and add a total of three (3) parking spaces as required, (i.e., one (1) space per hotel room) to that pre-existing nonconforming number.

Attorney Conklin said for most people who own units at the Lodge at Lincoln Station, the unit is a second home kind of place, so the parking lot is not well populated. There is no problem with parking there. During last year's busy season, they had a whole section of the parking lot blocked off with roofing materials.

Bont said if the Town does not want to create undue trouble by setting a bad precedent with other projects coming into Town, the Planning Board will need to word the approval in a certain way

so as to distinguish it from other situations in part by characterizing it a pre-existing nonconforming situation. The Planning Board will need to make sure they have enough spaces to accommodate these three (3) hotel room units and room for snow storage. Attorney Conklin said he knows Scott McIntyre has told him he has enough room to create a few more parking spaces, so if we have to create three (3) more we can do it.

Grant agrees that would be the cleanest way to handle this, because there would be proof you addressed the parking situation.

Chair Spanos asked, do accurate subdivision plans exist for this property? Attorney Conklin said he is not sure. He has never added them up or done a global assessment of what is there.

Motion to count and characterize the number of parking spaces as pre-existing nonconforming and have them add 3 additional spaces:

Motion: Grant **Second:** Hettinger **All in favor (5-0). Motion carries.**

Bont asked if Attorney Conklin could look into what type of document the Town can record that would satisfy the Grafton County Registry of Deeds.

Attorney Conklin said he asked if the registry would take an affidavit from me attached to the paper plan, and they said they wouldn't take it. They needed a Mylar. The reason they wouldn't take it was that the surveyors were complaining that people were making their own little plans and writing stuff on them.

Bont said if he has a good and complete recorded plan of what currently exists, we could record the Notice of Decision, with reference to that plan, which is already recorded. We can work together on the description from the plan so that a newcomer could understand it.

Fire Chief Beard said for accountability reasons they will need to label the room they are renting.

Discussion regarding possible conditions of approval:

- Provide something be recorded so that we can clearly identify these spaces as hotel rooms.
- The three hotel rooms must remain part of common area;
- There shall be no sale of any of the three hotel units without prior subdivision approval;
- The three hotel rooms shall not be used to establish residency. Use is limited to hotel unit, to be used as short term.

Motion to submit accurate recorded plans of wings A-B, C-D, and L so we can identify these spaces as hotel rooms. Hotel units shall remain part of the common area, and shall not be conveyed without subdivision approval. Hotel units shall not to be used to establish residency. Use is limited to a hotel unit, to be used as a short term hotel rental.

Motion: Strickon **Second**: Hettinger **All in favor (5-0).**

D. Conceptual – Taylor Beaudin representing William & Cynthia A. Conn re: Site Plan Review of Map 110, Lot 015 177 Connector Road changing use of property from Residential to Business and Industrial Uses.

Presentation:

Bont said T. Beaudin is seeking advice about what documents the Planning Board needs from him for this Site Plan Review. He has already given the Planning Board some idea of what William Conn wants to do with the property, but he needs to know what he needs to provide to the Planning Board for Site Plan Review approval. For example, does he need to get a surveyor to put together a survey and create a Mylar to be recorded?

Robinson asked, does the Planning Board really need a Mylar provided for this piece? Don't we have a survey?

Bont said the 1985 Peter Govoni survey includes more pieces of land than William Conn presently owns. This situation involves a change and expansion of use.

T. Beaudin said the garage already exists and it is all on the same lot as the house (177 Connector Rd.). The garage was originally a "hobby" garage. The property is still in the General Use (GU) District. The permit was for a residential garage. Now William Conn has been told to change the use of the garage to commercial or business and industrial use and it is an expansion of a business/industrial or commercial use. Taylor Beaudin said, "We haven't changed the use, what was originally on the building permit was general use."

Bont said the garage was built in 2014. The Land Use Authorization Permit was for a residential garage. Since then the Town has a performance bond with Lincoln Excavating and Trucking to do the Pollard Road sidewalk project that lists Conn's business address as 177 Connector Road. William Conn (and Taylor Beaudin) want to run his business, Lincoln Trucking and Excavating LLC, out of the garage which is a business use. Prior to building the garage they ran the business out of the front yard. They did not have a significant commercial building. However, now Conn also wants to stockpile his contractor's materials and contractors equipment there. Unfortunately, those two uses are characterized differently: a business use and an industrial use. Bont said luckily, William Conn's property is in the correct zoning district for both a business use and an industrial use for the property; William Conn just needs Site Plan Review approval for an expansion of what he has going on at the property.

Chair Spanos said he believed the Planning Board had already approved the use of that parcel for the trucking business. Bont said it must have been prior to her or Town Manager Burbank working for the Town. Taylor said he thought the whole controversy about the business had started back in 2010.

Strickon asked T. Beaudin what he was planning to store there. T. Beaudin said equipment and perhaps a pile of gravel.

Chair Spanos thought that William Conn's use was grandfathered.

T. Beaudin said he can draw out a surveyed plan, but he said that the items on the checklist seem irrelevant for his property, such as the storm water management requirement.

Bont said she understood the garage that William Conn built in 2014 was supposed to be a residential garage; now he is planning on putting an office in there as well. We are encouraging him to come in for Site Plan Review as his adding a huge garage is an **expansion** of a business and industrial use and required Site Plan Review. We did not require him to come in for Site Plan Review before he built the garage because it was his intent to use the garage for residential purposes. Otherwise we would have made him come in for Site Plan Review PRIOR to issuing the Land Use Permit to build the garage.

Chair Spanos said that his main concern is to legalize the business and industrial uses.

Robinson told T. Beaudin to ask for a waiver for anything that does not relate to the property that T. Beaudin does not think he needs. For instance, he would not need to meet any homeowners' association requirements or anything like that because he is not part of a homeowners association. Robinson told T. Beaudin to include a plan with the "basic stuff," such as setbacks, lighting, etc.

Chair Spanos asked if everyone was comfortable if he came in without a surveyed plan. T. Beaudin responded he would rather come in with his lot plan and risk someone having a problem with it rather than paying to have a survey plan completed. No members of the Planning Board had any objections.

IV. ADJOURNMENT

Motion to adjourn at 9:30 pm.
Hearty Motion: John Hettinger Emphatic Second: Paula Strickon All in favor (5-0).

Respectfully submitted,

Ellyn Gibbs, Recorder

Date Approved:

James Spanos, Chair

Exhibit A.

When either a Homeowners' Association Declaration of Covenants and Restrictions or a Condominium Declaration or Bylaws require an individual home owner or unit owner (either being a "Unit Owner") to obtain approval from the Homeowners Association or the Condominium Association (either being an "Association"), with jurisdiction over that submitted phase of the project, for a specified action within that subdivision or previously submitted Condominium or the submitted phase of a Condominium, the Unit Owner who applies for a Land Use Authorization Permit (LUP) from the Town shall certify to the Town that the plans submitted to the Town, as part of the Unit Owner's application, are the same plans approved by the Association.

If the Association does not respond, in writing, to the Unit Owner with an approval or with specific reasons for denial and with the action needed to obtain approval or with reasons for a complete denial of the Unit Owner's request for approval within thirty (30) days of the date of the written submission, the Association shall be deemed to have waived its right to approve or deny the request and the Unit Owner can thereafter proceed to the Town without the approval of the Association, unless the Association documents provide otherwise.

The Association shall respond to a corrective submission by the Unit Owner on the same basis as above.

Exhibit B.

planning

From: David Yager <davidy8766@gmail.com>
Sent: Monday, January 8, 2018 6:43 PM
To: townmanager; planning
Subject: Change in Process of Land Use Permits - CONFIDENTIAL

All,

I want to comment on the proposed language I have seen regarding Land Use Permits and home owners associations.

It has come to my attention that not all communities and HOA's have published rules, regulations or guidelines as part of their building and development process that are agreed to and accepted in advance by all owners as a requirement to being part of a community regarding what can and cannot be constructed in an HOA restricted community. To that end I would like to modifications to the proposed language.

In the specific case of South Peak Resort, there is an ARB or Architectural Review Board as part of the Community Association that all owners planning to build in the community have agreed to as part of purchasing land in the community which requires owners planning to build single family homes on lots within SPR to submit complete building plans designed by an architect and stamped by a license engineer as required in order to be given permission to build at SPR upon review and inspection of the plans and construction adherence to the such plans.

The SPR ARB guidelines require owners have a land use permit from the town and that the town and SPR have the same revision and approved and signed off construction plans.

The changes that we have been discussing are in context of a development with such published and approved building guidelines, an organization to enforce such guidelines and a way to enforce the guidelines once the building has been completed with the prior agreement of all owners that this is a requirement.

We also discussed what the town can do if it is know that an owner has violated its Land Use Permit. Does the town have the right to subject a completed building to an inspection to insure compliance of the Land Use Permit and the the permit has not been violated?

Also, we discussed making sure that owners coming back to the town for additional Land Use Permits on the same property have received new ARB approval from the appropriate entity and have submitted building plans approved by the ARB and submitted the same revision and approved plan to the town.

What I do not believe to be appropriate is to give all HOA's the ability to decide what can and cannot be built without first having published documents as part of the resort or community which details the building guidelines, standards and approval process for construction which owners have agreed is a condition for building in that community. We do not want to give HOA's the legal right to reject a building plan without having clearly documented detailed agreed upon building guidelines.

I know this is coming up for discussion this week and I wanted to clarify what I believe we have been discussing.

Thanks for listening.

Regards,

David

Exhibit C

H. **Sprinkler System provided:** ☐ YES ☐ NO Is this part of a Phased Project? ☐ YES ☐ NO

Which Development and Phase? _____

IDENTIFICATION:

LICENSE NUMBERS MUST BE FURNISHED FOR RESIDENTIAL, COMMERCIAL AND PUBLIC USES*

	Name & License #	Mailing Address	Telephone Number
Surveyor	#		
Architect/Engineer	#		
Electrician	#		
Plumber	#		
Contractor*	*No license required**		
Structural Engineer for Retaining Walls	#		
Other(s)			

After the project is complete, the contractor(s) and all licensed professionals shall be required to sign a *Construction Control Affidavit* that their work was performed in accordance with the NH State Building and Fire Codes.

CERTIFICATION: *(initial all that apply or if all apply then just sign and date)*

☐ I hereby certify that the information contained in this *Land Use Permit Application* is accurate and complete to the best of my knowledge. I understand that any Permit issued based on inaccurate information is subject to immediate withdrawal.

☐ I understand that the decision to issue this Permit is subject to appeal to the *Zoning Board of Adjustment*. Such appeal must be taken within thirty (30) days of the issuance of the Permit implementation of this proposal during that time period is at the Owner's risk.

☐ I understand that the approved Permit must be prominently displayed within seventy-two (72) hours of issuance of the Permit and for the duration of construction. Failure to display the Permit during this time period is sufficient grounds for withdrawal of the Permit.

☐ I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent and we agree to conform to all applicable laws of this jurisdiction.

☐ I have attached written authorization from the owner or lessee to this application.

☐ I understand that the Town will not enforce any private covenant that varies in any way from the Zoning Ordinance. Enforcement of private covenants is up to the party given enforcement rights under the declaration.

Commercial Uses:

☐ Multi-Family (number of units ____)

☐ Non-Residential ☐ Fence ☐ Other _____

Change of Use/Expansion of Use: Yes ☐ No ☐

Date approval granted by Planning Board: _____

Current Existing Use: _____

Proposed New Use: _____

Briefly describe the project or work to be performed:

_____

_____

Proposed Use of this property: _____

Describe how the use of the property will be changed or affected by the proposed construction:

_____

_____

Ownership: ☐ Public (includes non-profit) ☐ Private

Is your property part of a Homeowner's Association or a Condominium Association? ☐ Yes ☐ No

If yes, you will need written authorization of the Homeowner's Association or the Condominium Association with your application

Estimated Cost of Improvement: $_____

Stormwater Management and Erosion Control Plan

Will you be disturbing fifteen thousand (15,000) square feet or more for this project?

☐ Yes ☐ No

Will you be disturbing fifty percent (50%) or more of the square footage of the lot (even if the lot is less than fifteen thousand (15,000) square feet)?

☐ Yes ☐ No

If yes to either question you will need to submit a Stormwater Management & Erosion Control Plan. See attached Stormwater Management Ordinance.

Special Flood Hazard Area (aka 100-year Flood Plain):

Is any of the property located in the Special Flood Hazard Area:

☐ Yes ☐ No

Are any existing structures on site located within the 100-year Flood Plain?*

☐ Yes ☐ No

Will any of the new construction be located within the 100-year Flood Plain?*

☐ Yes ☐ No

*If yes, please complete the Flood Plain Permit Application**

EXHIBIT D

planning

From: Raymond D'Amante <rdamante@damantelaw.com>
Sent: Monday, January 8, 2018 2:57 PM
To: planning
Cc: Raymond D'Amante
Subject: Planning Board Proposed Changes to the Zoning Ordinance
Attachments: DOC010818.pdf

Carol,

Attached please find my letter to the Lincoln Planning Board.

With regards,
Ray

D'AMANTE COUSER PELLERIN & ASSOCIATES, P.A.

ATTORNEYS AT LAW
NINE TRIANGLE PARK DRIVE
P.O. BOX 2650
CONCORD, NEW HAMPSHIRE 03302-2650
TELEPHONE: 603-224-6777
FAX: 603-224-6696
EMAIL: damante@damantelaw.com
Www.damantelaw.com

RAYMOND P. D'AMANTE *
BRYAN L. PELLERIN **
BRUCE J. MARSHALL

RICHARD B. COUSER (1941-2008)

* ALSO ADMITTED IN NY AND CA
** ALSO ADMITTED IN MA

January 8, 2018

VIA EMAIL TO CAROL BONT

James Spanos, Chairman and
Members of the Lincoln Planning Board
148 Main Street
Lincoln, New Hampshire

RE: **Planning Board Proposed Changes to the Zoning Ordinance**

Good Evening Jim and Members of the Board.

I received the proposed changes to the LUPO as a Member of the ZBA. Both boards have to apply these criteria. They need to be clear and workable. Also, they should not inadvertently expose the Town to liability.

The following are my comments to the Planning Board regarding the proposed changes to the LUPO to be considered on January 10, 2018.

I. **Article VIII, Section A 2 - Special Exceptions:**

A. ¶2.a.iii - This section reads as the "total" absence on a site regardless of its size. If any of these section iii conditions exist, there can be no approval. For example:

1. A One Acre lot with .9 acres of floodplain, shoreland, wetlands or steep slopes is not suitable for any development.

2. However, a One Hundred Acre lot with .9 Acres of these conditions is also totally unsuitable, because the section says "Absence".

This Section is a taking of the 99 Acres and exposes the Town to major liability. We need to correct this discrepancy and clarify.

- It depends on the person.
- How does the ZBA apply this standard?
- Too broad?
- Be specific

- **Decrease in Valuation.** This is a variance standard. I question why this is added to a special exception. Every special exception could require an appraiser's opinion from the applicant and could result in another appraisal from the opposition. This could be expensive and a basis for litigation. It is a burden on every property owner seeking relief.

E. ¶2 f - What controls in the case of a conflict between the Zoning Ordinance and the Master Plan? It should be the Zoning Ordinance, Master Plans can be outdated.

E. ¶2 c I - "Architecturally compatible" - Must all buildings be the same architecturally? Can someone have a log home in a neighborhood of conventional stick built homes? I like architectural diversity.

Also:

- **"Tranquility"?**
- One House could disturb the tranquility to some people.
- **"Incompatable uses"?**
- What does the Zoning Ordinance permit in the District?
- Does this mean the ZBA cannot grant a use variance?
- This negates specific powers of the ZBA without due process.

F. ¶2.d.ii - ". . . there will be (i) no "excessive trip generation" or (ii) . . . . No Vehicular traffic" Are these different standards? If so - define them.

- "No . . . Vehicular Traffic"
- Really?
- What kind of project is that?
- What is the standard?
- It cannot be "No vehicular traffic"
- If a single family home is permitted its traffic cannot be excessive.
- It is a permitted use.
- A single family home generates a certain amount of traffic
- ITE traffic is permitted if the use is permitted
- It is not excessive
- This could be a nightmare
- A complete taking?

further issues.

As an example, a Condominium in this situation is Coolidge Falls. It is anticipated that this proposed section is designed to address the current Coolidge Falls situation.

D. **Due Process**: The proposed language requires the written approval of the Association. However, there is no due process. What if the Association ignores the request? How much time should pass before the Town and the applicant proceed without that approval? Adding this due process requires more than one sentence. It is a new procedure with critical rights at risk.

E. **Existing Rights**: Applying this new requirements to an existing Condominium could constitute a taking and liability for the Town. This should be researched.

F. Section B.2, second sentence provides ". . . the plan submitted to and approved by the homeowners association. . . "

The Planning Board should delete "submitted to and" and limit the sentence to "approved by the Homeowners Association", because the plan submitted to the Association could be changed during discussions with a different approved plan resulting. The Certification should be limited to the plan "approved by the Association."

In addition, the section should provide a reasonable time for the Condominium Association to meet to review the plan and to approve the plan. If it does not do so, the provision shall be deemed waived by the Association.

G. The new proposed Condominium language needs work to balance and protect the rights of all parties and to eliminate liability for the Town. It should be tabled and considered further.

IV Article VI . . . Height Requirements

This section is clear. I do not have any input.

V. **Article VI - D Solar Energy Systems**

I did not have time to review this proposal.

Mary Pelchat

From: planning
Sent: Tuesday, February 27, 2018 9:09 AM
To: Mary Pelchat
Subject: FW: FRPOA Response
Attachments: FRPOA Letter to Lincoln BOS - Associaiton Approval - (RSM-02-13-2018).pdf

From: Harold Schofield [mailto:hschofield@cox.net]
Sent: Thursday, February 15, 2018 11:12 AM
To: townhall <townhall@lincolnnh.org>; townmanager <townmanager@lincolnnh.org>; planning <planning@lincolnnh.org>; Pat Romprey <patrickromprey@yahoo.com>
Cc: O. J. Robinson <Robinsonbos@lincolnnh.org>; Tamra Ham <Hambos@lincolnnh.org>; Jayne Ludwig <ludwigbos@lincolnnh.org>; Dave Larsen <davidblarsen@gmail.com>; Bob Mclaughlin <rsmhome566@gmail.com>; Harold Schofield <hschofield@cox.net>
Subject: FRPOA Response

Dear Lincoln Planning Board,

The attached letter is sent via mail and email. It puts forth 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*". You did not hear from any homeowners or homeowners associations at that meeting, only from developers with a vested interest in the status quo. Therefore, we respectfully request that you include this letter in the meeting minutes and the record for public viewing.

Thank you,
Harold Schofield
President, Forest Ridge Property owners Association

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

February 7, 2018

(Via mail and email)

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

RE: Homeowner/ Condominium Association Protection Ordinance

Dear Selectmen and Planning Board Members,

Forest Ridge Property Owners Association ("FRPOA") respectfully requests to supplement the record of the January 10, 2018 Planning Board Meeting concerning Agenda Item 4, "*Require Approvals from Homeowners Associations and/or Condominium Association prior to issuing Land Use Authorization Permits (LUP) per Town Attorney*". We believe that you should consider our position because the testimony at the hearing was almost exclusively from developers with vested interest in trying to develop property without regard for its impact on homeowners who have purchased property in the development.

The discussion during the hearing was confusing because at least two issues were being discussed simultaneously. First, most of the discussion and the proposed language distributed by Attorney D'Amante, addressed proposals by individual homeowners who wished engage in some construction which would be subject to requirements imposed by a homeowners association. Second, a lesser portion of the discussion concerned the relationship between a developer and a homeowner association when the developer plans construction of a new phase in a planned development. FRPOA comments relate to this second topic.

FRPOA is the master homeowners association for the Forest Ridge Community. The Forest Ridge Community was created as a planned development almost thirty years ago in 1988. In the public offering statement, the developer (then "The Satter Companies of New England") described their proposal for "a planned 285± acre community to be known as the Forest Ridge at Loon Mountain Community, which may contain a combination of residential subdivision and condominium projects in a variety of housing styles . . . over a period of approximately ten (10) years." Forest Ridge at Loon Mountain, a Condominium, Public Offering Statement (Revised March 1989) at page 3. Six years later, the developer (then "Granite State Phoenix Corporation") submitted a Master Plan Report October 1995 to the Town. At that time, about 49 acres had been developed with 110 units consisting of the original townhouse development along Pinehill Lane, Mountain Brook Circle, Hillside Circle, Woods View Lane and Forest Ridge Drive, the single family house developments along Forest Drive, and the first phase of the garden style condominiums in Forest Circle. Subsequently, a new single family homes development, Mountain View Homes, was added in 1996, a townhouse duplex community, Forest Woods, was added in 2005, and a garden style condominium development, Forest Gardens, was added in 2006. Most recently, the developers have begun construction of

another townhouse duplex community, The Pines, but as explained later in this letter, The Pines is not yet part of the Forest Ridge Community,

Perhaps, there is no better example of the problems caused by the unfettered actions of developers than Forest Ridge. A phased development originally intended to be complete by 1998 is still dragging on leaving problems in its wake. For example, neither of the last two phases, Forest Woods and Forest Gardens, were ever completed. Instead, the developer abandoned the projects leaving foundations for unfinished construction and unsightly construction sites for nearly ten years. The foundations were left as deteriorating safety hazards at Forest Woods and were only removed as a result of the objections raised by FRPOA at the Planning Board during the approval process for "The Pines". Now, both Forest Woods and Forest Gardens, are subject to a pending foreclosure sale because the developer failed to pay the mortgages they took out on the projects. In addition, roads that were the responsibility of developers still remain unfinished and had deteriorated in one area to the point where FRPOA funded repairs to address safety concerns. Forest Ridge homeowners have repeatedly had to pay for failures of developers to follow through on their commitments and promises.

The problems caused by developers in Forest Ridge are not simply "old news." The Pines continue to demonstrate their failings. For example, the storm water detention ponds had to be revised because a foundation was dug in the wrong location, and we understand there is a structural problem with the construction of at least one foundation. Further, as outlined in a letter mailed and emailed on February 6th from FRPOA, the storm water detention ponds in The Pines still are not properly constructed resulting in safety concerns and potential downstream flooding. As noted in that letter, The Pines have not been properly annexed as part of FRPOA or the Forest Ridge Community.

FRPOA strongly believes that the only way the Town can seek to avoid endless recurrences of similar problems is to seek the input of homeowner associations who are directly affected by the developer's plans. Whether the Town should require homeowner association approval prior to issuing a Land Used Authorization Permit ("LUP") or seek comment on the proposal, some mechanism is needed to assure that homeowners associations have a voice in any proposal for new development in their communities.

We are disturbed by the various commenters at the January 10 hearing that argue that homeowner association should be shut out of the process. For example, Attorney Michael Shepard, a part-owner in New Jefferson Holdings, a current developer in Forest Ridge, stated in his testimony that "we know from experience these associations can be fickle, capricious, vindictive and lazy." Dr, Brian Holub, another partner is in New Jefferson Holdings, argued that "homeowner associations are not your constituents – the homeowner is your constituent."

Homeowner associations, however, represent their member homeowners who clearly are "constituents." Homeowner associations are created under the NH Condominium Act and the Declarations filed by developers in the Grafton County Registry of Deeds to represent all the individual homeowners who are their members and who are taxpayers and land owners in, and residents of, the Town of Lincoln. For example, FRPOA is a master homeowners association for the Forest Ridge Community representing 6 junior associations and 217 homeowners. The 9 dedicated homeowners on FRPOA's Board of Directors represent all of the homeowners in the Forest Ridge Community, and strongly object to Attorney Shepard's ad hominin attack. We

suggest that the Town consider the history of short sighted decisions and failures of the developers in Forest Ridge, and decide who is better described by Attorney Shepard's words.

We also wish to correct certain misstatements made concerning the Forest Ridge Community during the testimony presented at the hearing. First, Attorney Shepard stated in his public testimony that "Forest Ridge has been built in phases since 1988. There has been a condo declaration since 1988 that gives developers the rights to keep building the next phase without the input or veto power of the homeowners association." While on one level this may be true, on another it is clearly false.

While the developer can build new developments on the additional land included under the Forest Ridge Declaration ("Declaration of Covenants, Restrictions, Easements, Charges and Liens for Forest Ridge Community" (November 16, 1988) Book 1773 page 0971, as amended), annexation of any new development to the Forest Ridge Community and FRPOA requires an amendment of the Declaration to adopt an Annexation Amendment. Prior to 1998, the Declarant had the unilateral right to amend the Declaration to annex new parcels to the master association, but since 1998 an Annexation Amendment can only be adopted with 2/3 approval of Forest Ridge owners at a regular or special meeting at which a quorum is present. Under amendments adopted by FRPOA in September 2017 and recorded in the Grafton County Registry of Deeds at Book 4311 page 0563, the FRPOA Board of Directors may enact an Annexation Amendment. However, the Declarant no longer has this authority.

Nonetheless, the developer of "The Pines," without legal authority, has recorded an annexation amendment for The Pines. Please note for record that FRPOA believes the "annexation" of The Pines is a nullity, and we do not recognize nor do we accept "The Pines" as part of the Forest Ridge Community or FRPOA. FRPOA will consider annexation of The Pines in the future when project is substantially complete, free of construction debt, and the malfunctioning detention ponds are corrected.

Attorney Shepard further states that "New Jefferson Holdings, LLC (NJH) now owns the Forest Ridge Resort and is building "The Pines at Forest Ridge." This too is false. NJH does not own the Forest Ridge resort. Forest Ridge unit and homeowners own Forest Ridge Resort. NJH owns the adjacent/annexable land defined in the Declaration.

While we agree that continued appropriate development is important to Lincoln, we strongly disagree that the developer's interests are the only ones that should be considered. To fulfill its obligations, the Town must consider the views of all of the residents and homeowners who will be impacted by its decisions, including the homeowners who make up homeowner associations. Among other issues, the Town should require that a developer provide:

- Proof that the developer has properly notified any affected association of its intent to build or develop at least 60 days before it submits its proposal to the Planning Board.
- Evidence that the planned development designs are consistent with and/or enhance unit and/or home values within the subject association.
- Evidence that plans contain proper provisions for parking, including additional visitor parking.
- Evidence of sufficient road and building bonds to assure that the developer will properly finish what the developer starts.

- Evidence of an enforceable developer plan to fund any added infrastructure requirements imposed on an association as a direct result of the proposed development.
- An enforceable agreement to finish the project and the associated road and utility infrastructure to standards consistent with the Town and the homeowners association.
- Proof developer and the plan of development is in compliance with the rules of the affected association.

FRPOA is not seeking a veto power on development in Forest Ridge. While there is no requirement that we annex new developments into the Forest Ridge Community and FRPOA, we believe it is in the long term interest of the Town, the developer and the homeowners association to work together cooperatively for the benefit of all. Unfortunately, we have found over the years that the developers prefer to simply charge forward with their plans without consideration of the Town and the homeowners who are left to live with the consequences. We believe the Town should adopt notice and comment requirements to assure there is an opportunity for communication which can avoid future conflict.

Most real estate brokers in town refer to Forest Ridge as a premier community with a long consistent history of effective, high quality association management. FRPOA urges the Town to adopt rules requiring consultation with homeowner associations to protect existing future homeowners in terms of property values, environment and lifestyles that attracted them to Lincoln. The Town of Lincoln should adopt rules to seek to prevent developers from starting projects that are poorly designed or that they will ultimately abandon unfinished and unsafe with no effective recourse by the homeowners, their associations or the Town. While involving homeowner associations in the LUP approval process will not guarantee that future projects will succeed, it will improve the likelihood of good outcomes,

We respectfully request that your include this letter in the record for public viewing, and that the Planning Board reconsider its decision not to recommend adopting a procedure for involving homeowner associations in the process for considering approval of an LUP.

Thank you

Harold Schofield

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

Cc: Butch Burbank, Town Manager
Carol Blont, Town Planner