APPROVED

LINCOLN PLANNING BOARD
REGULAR MEETING MINUTES
WEDNESDAY, JUNE 13, 2018 – 6:00PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH

Present: Chairman Jim Spanos, Vice Chair Joseph Chenard, Member Patrick Romprey via teleconference, Member Mark Ehrman, Selectmen's Representative Alternate Tamra Ham, Alternate Norm Belanger, Alternate Callum Grant, Alternate Stephen Noseworthy
Members Excused: Selectmen's Representative OJ Robinson
Members Absent: None
Staff Present: Town Planner Carole Bont, Town Manager Butch Burbank
Staff Excused: Ellyn Franklin, Recorder

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 (APPLICANT)**, 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.
- **Susanne (Susan) A. Chenard,** resident, 11 Liberty Road, Lincoln NH 03251 (Map 107, Lot 061) and Realtor for Loon Reservation Service, 264 Main Street, Suite 12, PO Box 785, Lincoln, NH 03251-0785, and owner of 19 Maple Street (Map 118, Lot 069)
- **Huguette Dumont, (ABUTTER)**, resident and co-owner of 166 Connector Road (Map 110 Lot 017), PO Box 443, Lincoln, NH 03251-0443
- **Marc Dumont, (ABUTTER)**, resident and co-owner of 166 Connector Road (Map 110 Lot 017), PO Box 443, Lincoln, NH 03251-0443
- **Susanne Gioiosa, (ABUTTER)**, owner of 176 Connector Road (Map 109, Lot 026) Trustee of Richard P. Gioiosa Trust, PO Box 82, North Woodstock, NH 03262
- **Richard Gioiosa, (ABUTTER)**, owner of 176 Connector Road, Trustee of Richard P. Gioiosa Trust, PO Box 82, North Woodstock, NH 03262
- **Marcellin Laliberté, (ABUTTER)**, resident and co-owner with Marthe Laliberté as Trustees of the Laliberté 2001 Family Trust, that owns 156 Connector Road (Map 110, Lot 019), Lincoln, NH 03251-9720

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

OJ Robinson was excused.

II. CONSIDERATION of meeting minutes from:

• May 23, 2018

Chair Spanos said that at the May 23, 2018 meeting there were only three members present and today only he and Steve Noseworthy are present to approve the minutes and they need a quorum and a quorum of those present (Spanos, Noseworthy & Robinson) so the minute will have to be approved at the next Planning Board meeting.

Motion to pass over the minutes from May 23, 2018 until next meeting: Noseworthy **Second:** Chenard **All in favor: (5-0) Motion carries.**

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

Chair Spanos asked each individual member of the Planning Board if they had any objections to Patrick Romprey participating by phone. There were no objections. Patrick Romprey was included in the meeting by teleconference.

IV. NEW BUSINESS:

A. 6:00 PM. Site Plan Review – William Conn & Cynthia Conn, SPR 2018-04 M110 L015 – William Conn – Change of Use

Applicant/Property Owner/Surveyor:

(1) Applicant & Agent: Taylor Beaudin, 8 Louis Lane, Lincoln, NH 03251, agent for property owners William Conn and Cynthia A. Conn

(2) Property Owner: William Conn and Cynthia A. Conn, 177 Connector Road, Lincoln NH 03251-9720 owns the property with an address of 177 Connector Road, (Map 110, Lot 015)

Property:

177 Connector Road, (Map 110, Lot 015). The property is located in the General Use (GU) District).

Proposed Project:

(1) Site Plan Review approval to change the existing residential use of the property (i.e., one single family home with a large residential garage) into a mixed residential and business use property with the single-family residence continuing, as is, and converting the residential garage to a construction business (Lincoln Trucking & Excavating, LLC) operating out of the large garage with an added office space and using the exterior space for storing construction and related equipment.

Presentation:

Taylor Beaudin said William and Cynthia Conn are just trying to change the garage from residential use to commercial use, without changing anything else the Conns are currently doing

at that property. *[Note: The Conns and Beaudin are operating Lincoln Trucking and Excavation LLC out of the property.]*

Planner Bont reminded the Planning Board that at a recent Conceptual meeting, the Planning Board had indicated to Taylor Beaudin that the Conns did not have to submit a Site Plan prepared by a surveyor, but could submit a drawing by the Applicant that was on an old survey map. The Planning Board indicated that Taylor Beaudin did not have to submit a Mylar to be recorded.

Questions by the Planning Board:

1. Romprey asked Planner Bont if the zoning district designation for this property [and two other lots] had been converted from the General Residential (GR) District to the General Use (GU) District in 2016. Planner Bont said yes, per the vote at the 2016 Annual Town Meeting.
2. Romprey asked Planner Bont when the Land Use Authorization Permit (LUP) was issued for the "residential garage". Chair Spanos said the Land Use Authorization Permit for the residential garage was issued in 2014.
3. Romprey asked if the Conn's entire lot (Map 110, Lot 015) was now in the General Use (GU) District. Chair Spanos and Planner Bont confirmed yes.

Waivers Requested by Applicant on the Site Plan Review Checklist:

1. **Page 1, Item 6.** An accurate plan of the site showing existing natural features including water courses and water bodies, various types of vegetation, topographical features and any other features which would be considered in the site design process.

Motion to grant waiver: Romprey **Second**: Ehrman **All in favor**: 5-0
Motion carries.

2. **Page 2, Item 9.** Soil mapping units and unit boundaries.

Motion to grant waiver: Ham **Second:** Romprey **All in favor**: 5-0
Motion carries.

3. **Page 2, Item 10.** Flood plain identification areas.

Romprey said he believes Flood Plain Identification Areas were already identified in 2014 [when the Land Use Authorization for the residential garage was issued]. Chair Spanos said Conn does need to address the location of the flood plain in relation to the garage again since Conn is asking for a waiver from requiring the floodplain areas to be identified on the Site Plan submitted. Planner Bont reminded the Planning Board members that each member has a copy of the Integrated Map in their packet that shows the location of what is variously defined as:

- "Area of Special Flood Hazard"
- "Floodplain" or "Flood-prone Area"
- "Base Flood" or "100-Year Flood".

Planner Bont said that by looking at the Integrated map with the hand drawn Site Plan Map submitted by Taylor Beaudin, the Planning Board can see that the garage is not located within the area of the base flood area or the 100 Year flood. The portion of the lot where the house is located is directly within the 100 year flood area, but the portion of the lot where the garage is located is not.

Motion to grant waiver: Ham **Second**: Romprey **All in favor**: 5-0
Motion carries.

4. **Page 2, Item 12.** The location of all building setbacks required by the Land Use Plan Ordinance.

Planner Bont pointed out that the Site Plan Map that Tylor Beaudin prepared for the Planning Board that the Board has before it has the setback areas shown to scale.

Motion to grant waiver: Ham **Second:** Romprey **All in favor: 5-0**
Motion carries.

5. **Page 2, Item 13.** Location of district boundaries, including wetlands.

Motion to grant waiver: Chenard **Second:** Romprey **All in favor: 5-0**
Motion carries.

6. **Page 2, Item 14.** The lot area, street frontage and the requirements for minimum lot size.

Motion to grant waiver: Ham **Second**: Chenard **All in favor: 5-0**
Motion carries.

7. **Page 2, Item 15.** Location of off street parking and loading spaces with the layout of the parking indicated.

Motion to grant waiver: Romprey **Second:** Ham **All in favor: 5-0**
Motion carries.

8. **Page 2, Item 17.** The location of all existing and proposed deeds, restrictions, covenants, etc.

Current Easement For Town Sewer Pump Station (Map 110, Lot 016):

Ham asked Planner Bont where the Town right-of-way over the property of William and Cynthia Conn to the Town of Lincoln Sewer Pump Station was located on the map. Planner Bont replied that the Town's right-of-way is highlighted on the version of the survey map she included in the Planning Board's packet with the bright blue highlighting. (That map also shows another easement as well to "lot 2"or Map 110, Lot 014 owned by Peter F. Govoni and Carol C. Govoni, Trustees.) Only the northernmost highlighted easement that goes from Connector Road to Map

110, Lot 016 (the lot owned by the Town of Lincoln in the northeast corner of the map) is the current Town easement.

[Note: The Lincoln Sewer Pump Station is located on Map 110, Lot 016 next to the Pemigewasset River. The Lincoln Sewer Pump Station serves all of the Lincoln properties along the US Route 3 corridor and all of the properties located west of the Pemigewasset River.]

Taylor Beaudin said he (and the Conns) believe that what the Town has is "just a maintenance easement to maintain the sewer line"; the Conns do not believe the Town easement allows the Town to gain vehicular access to the Sewer Pump Station or the lot the Pump Station sits on. Planner Bont said she understands from Town Manager Burbank that the location, extent and character of the easement is an issue; the Town and the Conns do not agree.

Taylor Beaudin said, looking at the survey map along the area [that looks like a roadway where the maps says "20' SEWER EASEMENT"] there used to be a road just to the right, in there by where on the map it says "5/8" REBAR FND FLUSH", just to the right of that sewer easement there used to be a road that used to come down through there where the Town sewer line runs.

[Note: Conn moved the former roadway entrance to his lot further north off Pollard Road as shown on the Site Plan submitted marked in red with "20' DRIVE" at the behest of NH DOT. Conn grassed in the old roadway and planted a tree in the old roadway bed. Now the former roadway access is Conn's "front lawn". Conn blames the Town for having to move his access.]

Using the highlighted survey plan, Planner Bont pointed out the thin blue and green parallel lines on the map which are where the sewer line (green) and water line (blue) will enter the new proposed office addition to the garage building. Taylor Beaudin said the water and sewer lines were not hooked up to the building yet. The two thin lines, green and blue, on the map just demonstrate where the water and sewer lines will go when the lines are put in. The sewer and water lines are coming out of the building so they could pour their slab, but nothing is hooked up yet.

Ham asked if the Town had "the verbiage for the current easement"? Ham was under the impression that the easement was to access the Town's sewer pump station.

Town Manager Burbank said the verbiage for the current easement has yet to be definitively resolved between William Conn and the Board of Selectmen. When Conn got back to Lincoln from Tennessee this summer Conn and the Board of Selectmen were supposed to address the issue. According to William Conn, the Town has only "a maintenance easement". The issue is: is the easement just for maintenance of the sewer line or can the Town drive over Conn's lot to get to where the sewer pump station is located. Does easement give the Town the right to have vehicular access to the pump station? Conn is contesting the Town's ability to have vehicular access (i.e., to travel over his lot) to get to the Town lot and the Town sewer pump station. Conn and the Town have not resolved this issue yet. Obviously, the Town has to get to that pump station, but that issue is still hanging. That is going to be a separate issue between Conn and the Board of Selectmen. Town Manager Burbank said he does not know how that issue impacts this particular public hearing on Conn's application for Site Plan Review approval.

See Plan #7804 recorded in the Grafton County Register of Deeds on January 11, 1994 (see attached Exhibit A).

The language for the easement is in the Quitclaim Deed from Peter Govoni and Carol C. Govoni to William Conn and Cindy Conn undated but recorded on December 23, 1993 in Book 2068, Page 858 references Plan #7804, recorded January 11, 1994 says as follows:

"ALSO EXCEPTING AND RESERVING herefrom an easement in favor of the Town of Lincoln for sewer purposes as shown on the referenced plan."

Town Manager Burbank said there was a situation where NH DOT made Taylor Beaudin and William Conn move the location of their driveway off Connector Road. The Town used to access its pump station through Conn's former driveway. That issue is still hanging. The Town is just waiting for the Town Manager to schedule a meeting with William Conn and the Board of Selectmen.

Ham said she thought the Board of Selectmen had resolved this and sent Conn the revised easement. Why was the easement not signed and returned? After an extensive discussion, Ham said she was leery of the Planning Board or the Town granting any additional approvals for William Conn's property while the nature, extent and location of the easement for the Lincoln Sewer Pump Station was still unresolved.

Town Manager Burbank said that for the Planning Board's edification. Obviously the town has a major sewer pump station that has been serviced for years. The issue will get resolved. It is just that when Conn left for Tennessee last fall he did not agree with the wording in the easement document and they have not gotten back together yet. Town Manager Burbank said he does not know what this matter is going to turn out. Town Manager Burbank said he does not know if the easement is something that this particular application has to address or not.

Planner Bont asked Town Manager Burbank if the Planning Board could make resolution of the easement a condition of granting Site Plan Review approval for this particular application.

Chair Spanos said whether Planning Board could make it a condition of approval is a question. The Town needs access to its sewer pump station.

Town Manager Burbank said for the public record, obviously the Town of Lincoln has a serious concern. The Sewer Pump Station at this location is probably one of the most important piece of sewer pumping equipment the Town has. The Town has to cross the Conn's property to get to it. This issue is going to get resolved. He is just not sure whether the Planning Board can make it a condition of approval. The issue is going to get resolved because the Town cannot move the location of the sewer pump station.

Ham said she did not know if resolution of the easement needed to be a condition of approval. Ham said that if the Planning Board makes it a condition of approval and then Conn says "Just forget it. We don't want to make the property a commercial property so the Town can't get the easement." Ham said she does not want that to happen. She also does not want to use the

easement to dangle over Conn's head and say "if you don't give us the easement you don't get the approval". Ham said she did not think that would be right either.

Town Manager Burbank said the Town has the easement already. It is a long standing easement. Conn disagrees with the language in the easement. However, the Town Manager has not had an opportunity to sit down and discuss the easement and try to iron it out with Mr. Conn yet.

Taylor Beaudin said he is not authorized to speak for William Conn on that matter. Conn has been in Tennessee since last fall. Conn just returned to New Hampshire last week.

Romprey said that the Town's sewer easement has been in place and was being used for at least eight (8) years and maybe longer when Peter Joseph was Town Manager; both the Town and Conn agreed. Conn and the previous Town Manager had decided that there was in fact an easement that the Town was using to maintain the Sewer Pump Station. Romprey said he was unsure about what paperwork was involved or what has transpired since then. Maybe the paperwork was never signed. He does not know. Whatever the case, the Town has been using that right of way for umpteen years. Obviously, the Town would have right by prescription – a prescriptive easement – even if the easement is not written on a recorded deed. However, Romprey said he does not agree that resolving the terms of the easement should be used as leverage in determining whether or not to grant the Conns Site Plan Review approval.

Do you have a neighbor who regularly crosses your property for some reason, or perhaps does something such as park his car on your property? Do you worry about the impact such a use may have on your property rights? You should.

What is a Prescriptive Easement?

New Hampshire recognizes prescriptive easements. An easement holder has no rights to possess the land over which they hold the easement but does have the right to make certain uses of that land. Some easements are express such as created by deed. A prescriptive easement is a different animal. A prescriptive easement arises without any written instrument based on someone's performance. That is, when a person makes an adverse, continuous, uninterrupted use of another's land for a period of 20 years. Once the prescriptive easement ripens, the property owner has no choice but to allow the easement holder to continue the use of the property owner's land indefinitely.

How to Prevent a Prescriptive Easement?

There are several ways for a property owner to prevent a prescriptive easement from arising over his property. The property owner can block the use before the 20-year prescriptive period runs. Alternatively, if the property owner wishes to be neighborly and to allow the use, but does not wish to give up rights in his land, the property owner can expressly permit the use. The granting of permission prevents the user from showing that the use was adverse—an essential element for a prescriptive easement. Permissive use can never give rise to prescriptive rights. [NH Attorney Benjamin T. King]

http://nhlawoffice.com/how-to-protect-your-property-against-prescriptive-easements/

Ham said she agreed with Romprey. She believes the Conn's driveway was moved in 2003. 2003 was when the Conns moved their house back away from US Route 3 and next to the Pemigewasset River and expanded it.

Chair Spanos said the quitclaim deed from 1993 references "an easement in favor of the Town of Lincoln for sewer purposes as shown on the referenced plan". The quitclaim deed also references "Plan #7804". The easement reference is in the quitclaim deed from the Govonis to the Conns dated December of 1993.

Motion to grant waiver: Romprey **Second**: Ehrman **All in favor: 5-0**
Motion carries.

9. **Page 3, Item 24.** Storm water drainage plan showing

   a) Existing and proposed methods of handling storm water runoff.
   b) The direction of flow of the runoff through the use of arrows.
   c) The location, elevation and size of all catch basins, dry wells, drainage ditches, swales, retention basins and storm sewers.
   d) Engineering calculations used to determine drainage requirements.

Planner Bont said the answer to this question is not readily apparent because the project – the conversion of a residential property into a business/industrial use property - was a piecemeal-project. First, Conn started using a portion of the property for the business without any buildings. Did he disturb a portion of the property then? Then Conn put in a residential garage. How much property did he disturb to put in the garage? Then Conn brought in additional equipment and stockpiles of materials. How much property did he disturb to do that? Did he disturb more than fifteen thousand square feet (15,000 sf) altogether, or more than 50% of the lot which are the threshold amounts for a larger lot before the requirements in the Storm Water Management Ordinance are triggered?

Ham asked Taylor Beaudin if he had immediate plans to pave the whole thing, and he replied no.

Motion to grant waiver: Chenard **Second**: Ham **All in favor: 5-0**
Motion carries.

Upon questioning, Planner Bont verified that the abutters have been notified.

Motion to accept the application as complete: Ham **Second**: Romprey
All in favor: 5-0 **Motion carries**.

Chair Spanos asked which site plan we have actually approved. Planner Bont said the one enhanced with the **light** red pen, which also has some blue and green markings. The Planner passed out copies of the site plan to members of the public.

Motion to open public comment: Romprey **Second: Ham** **All in favor: 5-0**
Motion carries.

Public Input

Planner Bont read a note from Susanne Gioiosa (who was also present at the meeting) into the minutes. The note is also attached to these minutes as Exhibit A:

Notes to Planning Board:

- Dust and Dirt - cannot keep windows open.
- Very noisy - more truck traffic.
- Property value is down 30,000 plus.
- Trailer home in front of property.
- When did Conn get their zoning change? Did we as abutters have any say? What are our rights as abutters? When did the town give Conn Construction permission to operate as a business on Connector Road, or is he conducting business illegally?
- We as property owners are very unhappy about the looks of our road since Conn started his business.

Susanne Gioiosa (phone number)

In response to Mrs. Gioiosa's written concerns, Romprey said the following:

Grandfathering:

Romprey said "Conn was originally grandfathered into his business about twenty-five to thirty (25-30) years ago."

General Use (GU) District Designation:

Romprey said as far as if the abutters have any say, it was a vote at an annual Town Meeting that changed the zoning district designation for his property from General Residential (GR) to General Use (GU). It was the Town's say, not necessarily the abutters' say.

Dirt and Dust & Noise

Romprey said he believes Taylor Beaudin and William Conn would be willing to minimize the noise and dust on that road. Romprey said he agrees that there should be some kind of mitigation for the sand, noise and dust. Taylor Beaudin said he will throw down some calcium on the dirt to keep the dust down. Beaudin said he will slow down on the road as well. Romprey agreed that is a good practice.

Planner Bont said there is a large pile of dirt near the low berm in the front of the subject lot, next to Connector Road (US Route 3A), which may be too close to the neighbors' homes. She drew the Planning Board's attention to photos that were submitted as part of their packet. Planner Bont said that in speaking with the neighbors, when the wind blows, the wind takes dirt off the pile and blows the dirt directly across the road toward the neighbors' homes. The dirt blows into through their window screens and onto the furniture and furnishings in their homes.

The dirt covers the front of their homes. They have to wash the front of their homes frequently. That is why the neighbors cannot keep their windows open during the spring, summer and fall. Planner Bont said perhaps it would be a good idea to request that Beaudin move this pile to a different spot on the lot.

Mr. Dumont said the dust is so bad, that if he washes his car on Monday, he has to rewash his car on Tuesday. When the wind blows, he has to keep the front door closed. He cannot open it. The dust is the biggest real problem for him.

Taylor Beaudin said if he is doing anything that bothers the neighbors, he might disagree with them, but do not hesitate to come over and see him or speak with him and he will see what he can do to mitigate it.

Mrs. Dumont said they never spoke to Beaudin or Conn before because the operation was very small, but now it is growing so much that the Beaudin/Conn construction operation has made life very difficult for them. Every time she opens her windows all she sees is sand and rocks on the front of her house.

Mr. Gioiosa said that maybe Beaudin could give them a hand washing their windows.

Promise to Move Trailer & Dirt Pile

Taylor Beaudin said he can move the trailer and the dirt pile this weekend. He does not have any problem with working with his neighbors but he also has to be able to work.

Noise & Disorderly Actions Ordinance

Mr. Gioiosa said, the Lincoln Trucking & Excavating LLC trucks wake them up every morning at 6:30 a.m. when Taylor Beaudin and William Conn bang their truck doors and tailgates shut and drop their plows.

Chair Spanos said the Disorderly Actions Ordinance lists 7 a.m. as the earliest allowable time for starting heavy equipment.

Taylor Beaudin said he cannot start work that late. He usually starts the truck up at 6:45 a.m.. He cannot imagine that an idling truck would wake someone up. He said his dump truck is parked even with the front of "his shop".

Disorderly Actions Ordinance

Planner Bont read, "Such person causes a breach of the peace, public inconvenience, annoyance or alarm, or causes a risk thereof by (d) making loud or unreasonable noise by any mechanically powered saw, grinder, drill, lawnmower, garden tool, or similar device with the exception of snowblowers used outdoors daily between the hours of 10 pm and 7 am. (e) making loud or unreasonable noise by loading, unloading, opening, closing, or otherwise handling boxes, crates, containers, building materials, trash cans, dumpsters, or other similar objects between the hours

of 10 pm or 6 am. or (f) operating any motor vehicle within the Town of Lincoln so as to make excessive noise by any of the following means: laying rubber, misusing your brakes, rapid upshifts or downshifts of transmission gears, racing the engine…"

Planner Bont said the Disorderly Actions Ordinance does not appear to say Beaudin cannot drive a truck, it just lists things he cannot do with a vehicle that would result in loud or unreasonable noises.

Excerpts: Disorderly Actions: A person is guilty of disorderly actions if:

III Such person causes a breach of the peace, public inconvenience, annoyance or alarm, or creates a risk thereof, by:

d. Making loud or unreasonable noises by operating any mechanically powered saw, grinder, drill, lawn mower or garden tool, or similar device (with the exception of snow blowers) used outdoors daily between the hours of 10 p.m. and 7 a.m.

e. Making loud or unreasonable noises by loading, unloading, opening, closing, or otherwise handling boxes, crates, containers, building materials, trash cans, dumpsters, or similar objects between the hours of 10 p.m. and 6 a.m.;

f. Operating any motor vehicle within the Town of Lincoln so as to make excessive noise by any of the following means:

1. Misuse of power, acceleration or traction so as to spin the wheels in the manner commonly known as "laying rubber."
2. Misuse of brake and stopping power in the deceleration of a motor vehicle where no emergency exists.
3. Misuse of power, acceleration or traction by means of rapid upshift or downshift of transmission gears.
4. Racing of engine by means of the accelerator, carburetor, gear selector, either when the motor vehicle is in motion or stationary.

Taylor Beaudin said he does not idle his equipment in the winter. He plugs his vehicles in during the winter time. He will not rev up his engines in the early morning hours. However, Taylor Beaudin protested that if there is an emergency water break, he has to go out in the middle of the night to fix it. Ham said Beaudin "should be perfectly able to do that".

Screening

Chenard suggested planting some small trees or shrub to keep the dust down along the driveway. Shrubs would also cut the wind and keep the dust down, and keep the dust from reaching the neighbors. Shrubs would also help cut down on the noise the neighbors would hear. Chenard said he was not talking about requiring a big hedge. He is talking about just some small trees and shrubs.

Taylor Beaudin said there are some small trees all across the front of the Conns yard already. If Beaudin eliminates the dirt piles he does not see where he would need to add any shrubs.

Ham interrupted and said Taylor Beaudin and William Conn (d/b/a Lincoln Trucking & Excavating) will not want to obscure the view of their business from the traffic passing by. Ham said she did not want to force Beaudin and Conn to block the view of their business with a hedge so that no one can see their business is there. Ham said that Taylor Beaudin would want people to know he had a business there.

Chenard said Beaudin and Conn could go with three to four foot (3'-4') arborvitaes. That would stop the wind and dust, but not obscure the view of the business.

Beaudin said Conn already has some trees planted in front of his lot. Beaudin said on the one hand you do not want to pave the entire lot because that reduces the amount of the pervious surfaces to absorb water. On the other hand he would not want to force the neighbors to put trees in front of their homes to cut the wind over at his place either. Lincoln has had an unusually dry summer which he thinks has kicked up the dust. Beaudin said he will throw some calcium chloride out tomorrow.

Ham said, in defense of the neighbors, when she moved to her house she knew it was right next to an auto shop. She knew and expected there would be constant exhaust coming into her house. But when Conn's neighbors built their homes, there was only one house on the lot across the street. There were no businesses there.

Taylor Beaudin argued that they knew what they were getting into because the property was in the General Use (GU) District. You can do anything you want in the General Use (GU) District. Ham said, as of now, the neighbors have a lot of dust and dirt coming from the Conn property that they have to deal with.

Mrs. Gioiosa said that Conn wanted to build a business building over on his lot before but he was refused. She does not know what the Planning Board would not approve that building, but would want to approve "this mess" across the street at Conns.

Ham said that Taylor Beaudin had said that he would do his best to keep the dust down for the neighbors. Beaudin will definitely work on that. If Beaudin does not do that feel free to come back to see the Board of Selectmen or come back and talk to the Planning Board. Ham and Chair Spanos said the Planning Board can hold another hearing. Ham said that Taylor Beaudin would do his best.

Mrs. Gioiosa said that in her home she cannot even open her bedroom windows.

Taylor Beaudin said that "we" come out of there two to three (2-3) times per day. They are "filling in out back" so they may be coming back and forth a few times more per day now, but once that area is all filled in, they will leave for work in the morning and be back to the shop at night.

Ham said that Taylor Beaudin will work on it; he will do his best to keep the dust down for the neighbors.

Chair Spanos asked Taylor Beaudin about just digging up and putting in some white pine. No one answered.

Property Depreciation

Mrs. Dumont asked what the Planning Board intends to do about the significant depreciation in their home values due to having a construction company across the street.

Romprey said he would have to see evidence of the property devaluation to believe it.

Ham replied that the Planning Board will need to look into the depreciation of the homes in then neighborhood. Ham said that they would have to look at the assessors' report and see what the assessors decided about reducing the value of their homes and why. Ham said she would have to look at the documentation for that claim and see what the factors are that contributed to the loss in value.

Romprey asked how much the value of their property had depreciated. Mrs. Gioiosa said about thirty thousand dollars ($30,000).

Mrs. Gioiosa said first they had a mess in the back of their house caused by the businesses in the Lincoln Industrial Park in the Small Business District (SMD) and now they have a mess in the front of their house with Conns construction operation.

Mrs. Gioiosa asked why wouldn't the Town make Taylor Beaudin and William Conn put their construction business in the small industrial park behind them instead of in front of her house in a residential neighborhood.

Romprey asked when the home began losing value. Was it after the Industrial Park went in? Chair Spanos asked Mrs. Gioiosa when the value of her house first start depreciating. Mrs. Gioiosa said it was two (2) years ago.

Chenard said that was about the same time that the first business moved into the industrial park. Chair Spanos agreed.

Romprey said he would be interested in seeing the documentation about the decrease in the valuations as well.

Planner Bont asked Mrs. Gioiosa whether the depreciation was reflected in just the property tax assessment or whether the depreciation was reflected in the estimated fair market value as well. Mrs. Gioiosa said both.

Chair Spanos said that market values and the property tax [assessment] values are different. Those are different variables that are used to establish your property tax assessment versus your fair market value. Mrs. Gioiosa asked Chair Spanos if he wanted to buy her place.

Size of the Proposed Office Addition

Chair Spanos asked Taylor Beaudin about the proposed office. Is the proposed office going to be an addition onto the garage? If so, how many square feet is the proposed addition? Taylor Beaudin said the proposed office is going to be addition to the garage. Planner Bont replied that the proposed office space is twenty-eight feet by twenty-four feet (28'x24'), for a total of six hundred seventy-two square feet (672 sf). Planner Bont said anything greater than five hundred square feet (500 sf) increase is considered an "expansion of use" requiring Site Plan Review. The proposed addition is shown on the Site Plan and on the elevation views right on the back of the garage.

Chair Spanos asked the abutters if they had any additional concerns.

Discussion re: Trailer in front of the Lot:

Mrs. Gioiosa said the neighbors want the trailer located in the front of the lot moved. Mrs. Gioiosa asked if Taylor Beaudin could be asked to move the potty that is currently located up near the road as well. Taylor explained that the small building is not a potty, but a shed. Mrs. Gioiosa said she did not see any horses in that shed. Taylor Beaudin said he would let the horses out.

(Note: The Town has no permit for a shed there.)

Chair Spanos said the Planning Board is making Taylor Beaudin aware of the Disorderly Actions Ordinance. Enforcement is not up to the Planning Board. Taylor Beaudin said he and Conn are not in violation of the Disorderly Actions Ordinance. Chair Spanos said he just wanted to make sure that Taylor Beaudin and Conn were aware of the Disorderly Actions Ordinance. It is not the Planning Board's call to say whether he is in violation of the ordinance or not.

Size of Business to be Operated Out of Property:

Mrs. Dumont asked how many trucks were going to operate out of the property. Chair Spanos asked Taylor Beaudin how many trucks he was going to operate out of the property.

Romprey said the number of trucks did not matter.

Ham said Beaudin can have as many trucks as he needs.

Mrs. Dumont said the number of trucks matters to her and her neighbors. When the noise from starting the trucks wake her up in the morning is she going to be disturbed by the noise from one or two trucks each morning or a fleet of eighteen wheeler trucks starting up one after another all morning long.

Chair Spanos asked Taylor Beaudin if he intended to keep the business the same scale as it is now and just add the office. Taylor Beaudin said, "for right now". However, Taylor Beaudin said "I am not going to sit in here and tell you that I am not going to ever have more." Ham

asked Taylor Beaudin, "At this time you have no immediate plans to expand exponentially [the size of your business] in the near future?"

Mr. Gioiosa said to Taylor Beaudin, "Maybe you could invest in some of those battery operated trucks". Taylor Beaudin said "The quiet ones?"

Sewer Pump Station Easement:

Ham said she would still like something in there in the conditions of approval requiring the property owner to sign an agreement for an easement for that sewer pump station.

Romprey said, "Absolutely not!"

Ham said she disagreed with Romprey emphatically.

Chair Spanos said he did not think the Town could enforce a condition to sign an easement for the benefit of the Town.

Romprey said he thought the easement was a separate item that nothing to do with Site Plan Review.

Ham said she disagreed because the property owner wants to change the use of the building that he built just a couple of years ago for residential purposes. There has been a business use added.

Romprey said the Town already has an easement.

Ham said the Town already has an easement supposedly only to access the sewer line, not the pump station and not to repair and maintain and access the sewer pump station. Taylor Beaudin agreed. If the Planning Board does not make it a condition of approval, then …

Chair Spanos said he wanted to wrap up the public input period and then discuss the conditions. Chair Spanos asked if there was any more public comment. Mrs. Gioiosa said maybe later.

Motion to close public comment: Romprey **Second:** Ham **All in favor: 5-0**
Motion carries.

Discussion re: Sewer Pump Station Easement as Possible Condition of Approval

Ham would like to impose a condition of approval for the property owner to sign an agreement with the town for a proper easement for the sewer pump station. If the Planning Board cannot include this as a condition of approval she wants to wait until they know whether they can include this before granting Site Plan Review approval.

Chair Spanos said the easement is not a land use question.

Ham disagreed, saying Conn wants to change the use for the building. The Town supposedly has an easement that gives access to the sewer line, but not the pump station, according to Conn. Ham said if the Town does not make the easement a condition of approval, then she thinks the Planning Board should wait before the Planning Board agrees to grant this request for a change of use.

Romprey said the Town cannot do that. The easement is a legal issue. The Town cannot hold the unresolved easement over Conn's head for Site Plan Review approval because it is a totally separate issue. Romprey said the fight over the easement is a legal matter; Conn has already been able to expand [by adding a **residential** garage] in years past without this condition. Romprey said that if the easement for the sewer pump station was such an issue the permits for building on the Conn lot should have been held up three to five (3-5) years ago before Conn was given any permits to expand. Romprey said, "I will absolutely NOT support that! That would basically be holding a noose over his head."

Ham said she would bite her tongue right now.

Planner Bont said she spoke to Planning Board Selectmen's Representative member OJ Robinson who was unable to attend the meeting. (Tamra Ham is his Selectmen's Representative Alternate.) OJ Robinson indicated to her that he held the same opinion as Ham. OJ Robinson believes that granting a proper easement to the Town for access to the sewer pump station should be a condition of approval for Site Plan Review. Ham agreed.

Ehrman said he would like to see the legal opinion of town counsel before making a decision, because he for one does not subscribe to the idea that a fundamental change in use is "grandfathered" in the sense that the Town cannot insist on a proper easement.

Chair Spanos agreed with Romprey. Chair Spanos said the Planning Board would be asking Conn to give up part of his property in exchange for approval. Romprey said the Planning Board cannot do that.

Ehrman would like to solicit the opinion of town counsel. He does not believe imposing a condition like that would amount to an "unconstitutional taking" [without just compensation]. Even if it may result in the Town paying some compensation to resolve the easement question, it would not be substantial compensation. However, Ehrman was unable to look at all of the documents for tonight's hearing due to other obligations. He believes that if a town needs a proper easement for an existing sewer pump station that is important; the Town needs to get the easement.

Ham said the Board of Selectmen signed the easement agreement and sent it to Conn for his signature, so what is the disagreement? Town Manager Burbank said Conn did not agree with the terms in the document the Town sent him, so that is the dispute. Conn has not signed the easement so the terms of the easement has not been resolved.

Ham repeated she is leery of granting approval for anything for this property without obtaining a proper easement from Conn for the Town Sewer Pump Station.

Romprey said the Town has been using the existing easement for years.

Ham said yes, the Town has an easement, but right now that easement [as shown on Plan #7804] goes right over the lawn and through a tree and the easement is for the sewer lines, not to access the sewer pump station. Perhaps the Town does not have an easement to "do it the right way".

Romprey asked if Conn has been letting the Town drive down his driveway. Ham said Conn has not physically stopped the Town yet. Town Manager Burbank said the Town is "trying to make this more of a legal agreement." Ham said Conn has verbally let the Town know that Conn has a right to stop the Town from accessing its Sewer Pump Station, but Conn has not done that yet. Romprey said to Town Manager Burbank, "Don't you think then, that this should have been an issue prior to this hearing? I do. Why hasn't it been a more public issue?"

Town Manager Burbank said this impasse has been going on since last October or November. The dispute over the easement was a town issue and has been very public in the Board of Selectmen meeting minutes multiple times; and the dispute was presented as "public" as soon as the Town could make it public.

Ehrman said, if this was the first application for a change in use from residential to business/industrial use? Town Manager Burbank and Planner Bont said yes. Ehrman said then there cannot be anything improper about imposing this as a condition of approval.

Romprey asked again why this issue involving the sewer pump station easement was not resolved in meetings for Conn's previous buildings when Conn built the other garage.

Note: The following buildings are reflected on the Conn's assessment card:

a. 1960 - Original House (built 1960) No building permit required.
b. 1970 - 168 sf deck (1970) No building permit required.
c. 1980 - 480 sf garage [could be 20'X24') (1980) No building permit required
d. 1993 - New windows & doors for house (1993 Building Permit received
e. 1996 - 2 story barn [18'X18'] (324 sf) (built in 1988, but Building Permit was issued in 1996.
f. 2003 - Additions & renovations to house (2003 Building Permit)
g. XXXX - 128 sf lean-to (no date) NO LAND USE PERMIT
h. XXXX - 128 sf lean-to (no date) NO LAND USE PERMIT
i. 2014 - Assessed as a "Commercial" garage – Permit for a "residential garage" (Land Use Permit for 2014; built in 2014)
j. 2018 - 24'X28' (addition to garage built 2018 almost complete as of April 1st - BEFORE site plan review approval) (2016 LAND USE PERMIT for addition to be used for residential purposes only – no water or sewer fixtures and no bedrooms)

Ehrman said the issue is coming up now because now Conn is making an application for a Site Plan Review Approval for a change in use. Romprey asked, "Why is it all of the sudden an issue?" Ehrman responded that "It is an issue now because Conn is making an application for a permit [Site Plan Review approval for a change in use]." Chair Spanos said it is an issue now

because Conn has applied for Site Plan Review approval; Conn already pulled a couple of permits for residential buildings in the past.

Romprey said that a member of the Planning Board made a comment that nothing new should be approved until the matter of the sewer pump station easement has been resolved. Shouldn't that have been the case two (2) buildings ago if it was an issue then.

Planner Bont said nothing in the zoning ordinance (i.e., Land Use Plan Ordinance) allows the Town Planner to force the property owner to address such an issue like an easement when a property owner comes in for a Land Use Authorization Permit (LUP) to put up a residential garage.

Planner Bont said in 2014 Conn applied for a Land Use Authorization Permit for a residential garage in a residential district; a residential building on a residential lot. There was no way the Town Planner could say "no" to that.

Chair Spanos said he did not think the Planning Board could legally force the applicant to address the issue of the easement when he comes in for Site Plan Review approval. Romprey agreed with Chair Spanos.

Planner Bont suggested that the Planning Board continue the hearing until a later date and get a legal opinion in advance of making a decision.

Ehrman said Burbank seems to be making an argument for adverse possession [*sic* a prescriptive easement], and this situation does not involve adverse possession [*sic* a prescriptive easement]. Conn has been notifying the Town that Conn can stop the Town from exercising its rights as an easement holder then use has not been exercised for thirty years. But then the use of the easement has not been allowed to continue uninterrupted and without explicit consent for a period of thirty (30) years or whatever the required time period is. Does it meet the criteria for a prescriptive easement? The answer becomes a factual issue. A factual issue becomes expensive to deal with. It is generally much cheaper to pay for the taking of an easement, particularly a small taking like this one, than it is to leave an open legal argument that has to be settled with factual discovery which is inordinately expensive. That is a very expensive way to solve a very simple problem in his opinion.

Romprey said he believes if the Town hold this easement as a hammer over Conn's head the Town will never get its easement. Romprey said he thinks it would be a huge mistake. Ehrman said he does not know how this condition could be considered a hammer.

Town Manager Burbank said he agrees with Romprey. As is, the Town is perfectly capable to taking legal action if it needs to. If the Conns and the Town of Lincoln have to sue each other, the Town "would do it on the enforcement side". He does not think the Town will have to. He thinks that the parties will work it out. He is not sure why the easement is an issue tonight before the Planning Board. The unresolved sewer pump station easement has been a long standing issue and what the Town is hanging its hat on is this: we have prior easement from the [Govonis - Peter and Carol Govoni in their Quitclaim Deed to the] Conns from 1993 and 1994. (See Book

2068, page 858 recorded December 23, 1993 and Plan #7804 recorded on January 11, 1994 in the Grafton County Registry of Deeds).

At Romprey's request Chair Spanos polled the Board.

1. Ehrman said he did not know any of the people involved. He said he would vote with the majority of the board. "Poll me last."
2. Chenard said he agreed with Town Manager Burbank and Pat Romprey. The Town has had easements with Jack Eaton when Jack owned the land and the Town needed to get that right of way. Then Jack went belly up. Town Manager Burbank said this may work out between the Town and Bill Conn behind closed doors and there won't even be a ripple in the water.
3. Ham said she believes resolving the dispute about the easement should be a condition of Site Plan Review approval.
4. Romprey does not believe resolving the dispute about the easement should not be a condition of approval – "absolutely not".
5. Belanger believes resolving the dispute about the easement could be resolved without that extra step so he would not want it to be a condition.
6. Grant said he does not believe the two issues are related. He believes the dispute about the easement is long standing and it is not connected to this application.
7. Noseworthy agreed with Belanger and Grant.

The Planning Board made a decision that the sewer pump station easement should not be part of or a condition for Site Plan Review approval.

Conditions:

1. Conn shall move the trailer;
2. Conn shall put down calcium chloride on the driveway and dirt piles and elsewhere, as needed, to reduce the dust;
3. Conn shall comply with the Disorderly Actions Ordinance;
4. Conn shall relocate the dirt pile near the front of the lot across the street from the abutters' homes;
5. The office will be 24'x28' or 672 square feet.

(Note: The office addition and any sheds need a Land Use Authorization Permit.)

Motion to approve the application with the above conditions: Romprey **Second:** Ham
All in favor: 5-0 Motion carries.

Romprey clarified that he is not opposed to the Town getting a proper easement to access the Town Sewer Pump Station at all; just that it should not be a condition of approval or part of this application. Chair Spanos agreed. Romprey asked Ehrman for his opinion. Ehrman said he does not know the people involved and their history of how they have dealt with each other in the past. He thinks that is relevant in this situation. That is why he voted with the majority who

do know the people involved. Romprey said he thought they could deal with the issue more diplomatically than trying to use resolution of the easement as a hammer.

V. PUBLIC PARTICIPATION AND OTHER BUSINESS: Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

No public participation.

VI. ADJOURNMENT

Motion to adjourn: Ham **Second:** Belanger **All in favor: 5-0**
Motion carries.

Respectfully submitted,

Ellyn Franklin
Recorder

Date Approved: 10/21/19

James Spanos, Chairman