

LINCOLN PLANNING BOARD
REGULAR MEETING MINUTES
WEDNESDAY, FEBRUARY 1, 2017 – 6:00PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH

APPROVED

Present: Chairman Jim Spanos, OJ Robinson - Selectmen's Representative, John Hettinger, Callum Grant (alternate), Norman Belanger (alternate)

Members Excused: Vice-Chairman R. Patrick Romprey, Paula Strickon, & Ron Beard (alternate & Fire Chief)

Members Absent: None

Staff Present: Town Manager and Town Planner Alfred "Butch" Burbank, Planning and Zoning Administrator Carole Bont, Police Chief Smith, and Wendy Tanner (recorder)

Town Attorney: Attorney Peter J. Malia, of Hastings & Malia.

Guests:

- **David Beaudin** – Lincoln Water Plant Operator and resident and co-owner with Mary Conn of 10 Louis Lane (Tax Map 116, Lot 004), Lincoln, NH 03251-0245.
- **Paul J. Beaudin II** – resident and property owner of 2 Louis Lane, Lincoln, NH 03251 (Map 117, Lot 069), PO Box 872, Lincoln, NH 03251-0872.
- **Josephine Crowe** – resident of 17 Hummingbird Road #4, Lincoln, NH 03251 (Tax Map 114 Lot 027-0K-00084) and owns 1905 West Nicole Drive, Lecanto, FL 34461-7633.
- **Martin F. Crowe III** – resident of 1905 West Nicole Drive, Lecanto, FL 34461-7633 and owns 17 Hummingbird Road #4, Lincoln, NH 03251 (Tax Map 114 Lot 027-0K-00084).
- **Clifton Dauphine** – resident, 7 Pleasant Street (Map 113, Lot 081), Lincoln, NH 03251.
- **Tamra Ham** – resident of 98 US Route 3, Lincoln, NH 03251 (Map 109, Lot 002) owned by Jonathan Ham, 98 US Route 3, Lincoln, NH 03251 and member of the Board of Selectmen.
- **Roger Harrington** – resident of 131 Pollard Road, PO Box 386, Lincoln, NH 03251 and owner with Sarah A. Harrington of 131 & 133 Pollard Road (Map 117, Lot 003).
- **Paulette LaMontagne** – resident of Florida, and property owner at 99 Pollard Road, (Map 117, Lot 020), PO Box 847, Lincoln, NH 03241.
- **Robert LaMontagne** – resident of Lincoln, NH, and property owner at 99 Pollard Road, (Map 117, Lot 020), PO Box 847, Lincoln, NH 03241.
- **Mary Jo Levitsky** – resident, abutter and property owner of 11 O'Brien Avenue, Lincoln, NH 03251 (Map 117, Lot 024) whose address is PO Box 184, Lincoln, NH 03251-0184.
- **Bruce Marshall, Esq.** – attorney with D'Amante, Couser, Pellerin & Associates, P.A., Nine Triangle Park Drive, P.O. Box 2650, Concord, NH 03020-2650 representing Romprey, Carla J. Trustee.
- **Jeffrey C. Martel** – resident, abutter and property owner of 113 Pollard Road, Lincoln, NH 03251 (Map 117, Lot 021) owned by Jeffrey C. & Karin Martel, Trustees of the Martel Family Trust, PO Box 66, Lincoln, NH 03251-0066.
- **Karin Martel** – resident, abutter and property owner of 113 Pollard Road, Lincoln, NH 03251 (Map 117, Lot 021) owned by Jeffrey C. & Karin Martel, Trustees of the Martel Family Trust, PO Box 66, Lincoln, NH 03251-0066.

- **Patricia McTeague** – resident and property owner of 51 School Street, Lincoln, NH 03251 (Map 113, Lot 113), PO Box 2, Lincoln, NH 03251-0002.
- **Peter Moore** – resident and property owner of 120 Pollard Road, Lincoln, NH 03251 (Tax Map 117, Lot 037).
- **Myles Moran** – husband of Mary Jo Levitsky and resident of 11 O'Brien Avenue, Lincoln, NH 03251 (Map 117, Lot 024) whose address is PO Box 184, Lincoln, NH 03251-0184 and Principal/Broker for Moosilauke Realty, PO Box 333, 104 Main Street, North Woodstock, NH 03262 and Principal of Kastmast Construction, LLC, PO Box 333, 104 Main Street, North Woodstock, NH 03262-0333.
- **Patti Jo Ouellette** – resident, abutter and property owner of 32 Maple Street, Lincoln, NH 03251 (Map 114, Lot 010) owned by Patricia A. Papio & Patti Jo Ouellette, PO Box 232, Lincoln, NH 03251-0232.
- **Kelley R. Philbrick** – 39 Butterfield Lane, Stratham, NH 03885-2302.
- **Lisa-Jane Philbrick** – resident of 11 Conn Drive (Tax Map 117, Lot 032), Lincoln, NH 03251.
- **Justin Roshak** – guest, 121 Toad Hill Road, Franconia, NH, student intern at the Littleton Courier newspaper.
- **Carol A. Smith** – resident of 104 Pollard Road, (Tax Map 117, Lot 040), Lincoln, NH 03251.
- **Delia Sullivan** – resident of 13 Coolidge Street (Tax Map 117, Lot 133001), Lincoln, NH 03251.
- **Thomas Tremblay** – resident of 19 Louann Lane (Map 117, Lot 017). 19 Louann Lane and & L/O Pollard Road (Map 117, Lot 016) are both owned by Thomas Tremblay, Trustee of the Thomas P. Tremblay Revocable Trust, PO Box 235, Lincoln, NH 03251-0235. Tremblay is President and business owner of Coldwell Banker Linwood Real Estate of Lincoln, 189 Main Street, Lincoln, NH 03251.
- **Wayne A. Wright** – resident and property owner of 118 Pollard Road, Lincoln, NH 03251 (Map 117, Lot 038), PO Box 691, Lincoln, NH 03251-0691.

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

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

II. CONSIDERATION of meeting minutes from:

- January 11, 2016

Motion to skip over the minutes until later in the meeting.

Motion: John Hettinger Second: OJ Robinson All in favor: 4-0

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

A. 6:00 PM Public Hearing Regarding Proposed Amendments to Town of Lincoln's Land Use Plan Ordinance (LUPO)

1. **Public Hearing Regarding Proposed Amendments to Town of Lincoln's Land Use Plan Ordinance (LUPO)** Public Hearing regarding the following citizen's petition received by the Town Clerk on December 1, 2016:

“...[P]etition the following Zoning Ordinance Amendment in accordance with RSA

675:4 Are you in favor of amending the zoning designation on the follow lots; Map 117 Lots 016,017, 018, 019 and 025 from General Use (GU) to Rural Residential (RR)?

Map 117 Lot 016 Thomas P. Tremblay, Trustee
 Thomas P. Tremblay Revocable Trust 2006
Map 117 Lot 017 Thomas P. Tremblay, Trustee
 Thomas P. Tremblay Revocable Trust 2006
Map 117 Lot 018 Thomas P. Tremblay, Trustee
 Thomas P. Tremblay Revocable Trust 2006
Map 117 Lot 019 Carla J. Romprey, Trustee
 1998 Carla J. Romprey Revocable Trust
Map 117 Lot 025 Carla J. Romprey, Trustee
 1998 Carla J. Romprey Revocable Trust”

Proposed amendment on file for public inspection at Town Office, open M-F 8AM – 4:30 PM.

Motion to open to public comment

Motion: John Hettinger

Second: OJ Robinson

All in favor: 3-0

Results of Additional Research and Town Attorney’s Legal Opinion

Paul Beaudin said that after the last meeting, members of the audience were hoping that further investigation would gather more information and he wanted to know if any new information was available to share with the public.

Town Manager/Planner Burbank said that because of the Planning Board’s wishes and the five (5) RSA 91-A requests received by the Town, the Town staff has scoured the building. In that search of town records staff found ZBA minutes where it looks like the zoning changes that occurred changing the zoning district designation for those five (5) lots from Rural Residential (RR) to General Use (GU), occurred as the result of ZBA decisions in two (2) separate years. We asked Attorney Malia to look into whether or not the ZBA had the authority to determine the zoning district designation for those five (5) lots because there was no vote by the Town Meeting. It has become pretty evident going back to the beginning of zoning (1986) that the Town Meeting never voted to change the zoning district designation for those five (5) lots so he asked Attorney Malia to look into it. Attorney Malia did some legal research and he wrote a decision that the Planning Board has a copy of.

Attorney Malia said that he would read his email, but that the conclusion he reached is that these five (5) lots are in the Rural Residential (RR) District because they were never legally changed to the General Use (GU) District. Although the citizens petition has to be placed on the Town Meeting Warrant at this point, this warrant article is non-binding, null and void. Since the Warrant Article does seek to restore these lots to their rightful zoning district, (which they are actually in), Attorney Malia suggested in his opinion email that the Planning Board vote to recommend passage of the citizens petitioned Warrant Article. Attorney Malia read his email addressed to Planning Administrator Bont and Town Manager/Planner Burbank with his opinion dated January 17, 2017. (see attached).

Attorney Malia said that because there has not been a vote at Town Meeting since 2010 to change the zoning district designation for these five (5) lots to the General Use (GU) District, they are still in the Rural Residential (RR) District. If folks in Town want these lots to be in the

General Use (GU) District, they should petition the Town to do that. The petition would be the exact opposite of the petition that is currently before the Planning Board tonight. It is too late to put such a petitioned warrant article on the warrant for this year's Town Meeting so they would have to either petition for a special town meeting or wait until the 2018 Town Meeting.

Chair Spanos said that before we go any further, Paula Strickon, Ron Beard and Pat Romprey are excused. Norm Belanger and Callum Grant are seated.

Attorney Bruce Marshall on behalf of the Rompreys:

Attorney Marshall, acting on behalf of the Rompreys, said:

- He was somewhat confused because at the last meeting, Mr. Robinson said (and the Chairman concurred) that members of the Planning Board could not vote either to support or not to support the petition until members of the Planning Board found out what the status of those five (5) lots was.
- He already had a pending Right to Know Request. After that meeting [January 11, 2017] he sent three (3) more Right to Know Requests. Attorney Marshall said he got an email [from the Town] on Friday, but he was not in his office so he received the email on Monday. The email said that the Town was still not finished putting all the documents together. Attorney Marshall said that he was **shocked** that Attorney Malia was able to get all the documents that Marshall had requested. He was **shocked** that the Town had its attorney go through the documents and that the Town Attorney had come up with an opinion when he [Attorney Marshall] still did not have all the documents that he requested from his Right to Know Request.
- “Secondly, when we recorded your [the Planning Board’s] vote today, we would like to be on record that we ask that Mr. Robinson recuse himself. Because at the last meeting that question came up about whether or not this was Rural Residential or General Use. And Mr. Robinson said that they have had some issues in the past with confusions with the zoning map versus the tax map. And how they handled it was they would put a warrant out to the Town saying, ‘Hey, we’ve been treating this [lot] as such and such a zone for years and we can’t find the records to back it up so [vote on it].”
- “And then he [Robinson] made this statement where he says ‘That there is no way I can guarantee you is that going to be fixed this way this time on this one.’ Which means he “predetermined” – made a decision without any information on. And under the statutes he [Robinson] needs to recuse himself from any vote for this going forward.”
- “Also, last time we were here Mr. Moran read through portions of a deed with a claim that there was some kind of deed restriction on the subject property, saying that they [the lots] could only be ‘residential’. My recollection was that he [Moran] represented to the Board that they [deed restrictions] were still in place. All he [Moran] had to do is look up one paragraph in the document he was reading to you that said they [deed restrictions] extinguish in 1985. So, another attempt of Mr. Moran to mislead the Planning Board.”
- “With respect to the legal opinion from your counsel, I do not have all the records because I was told by an email that was sent out on Friday that we don’t have them all together yet - can’t even find them all. Some of the records that I have found show that back in 2003 when you had the Master Plan and updated some of your zoning maps,

there were several people in town in different areas – one was Mr. David Clark, one was Mr. Tremblay himself, and at least one other one was a Mr. Spanos – all found inconsistencies from when the Town first created the ‘Rural Residential’ zone. Because along the main strip out here on Route 112, in the Master Plans, in the original zoning [ordinance], it said that the commercial Village Center and General Use would extend two blocks back. So, when they came to the Town, they were told to go to the Zoning Board. I have some of those minutes from the Zoning Board. I have opinion from counsel back then that says because the town lost some records, the issue wasn’t changing the zones, they were saying... And I since got some affidavits I’m putting together from the actual members, chairman and board members back then, that originally it was general use.”

- “When you created the Rural Residential zone, because at that Town Meeting there was no specific map. That after that was voted to be ‘Rural Residential’ zone, someone in the town office hand colored the map. Back in the 2010 era, the Boards in place at that time all decided that the actual drawing was inconsistent with what they had put forth to the Town to vote on for the General Use area and where the Rural Residential limits would be.”
- “So, it appears counsel for the Town went back to 2010 when he should have gone back to the beginning and looked at a complete record. The complete record shows that it was always General Use and in 2010 it came to the Zoning Board. And the Zoning Board under its own ordinance, when there is a question or confusion of where a boundary is can make that decision. They were directed to come back.”
- “And it was also important to note that back in the late 90s, around 2000 a portion of Mr. Romprey’s property was cut off for one of the commercial properties on Route 112. That couldn’t have happened unless Mr. Romprey’s properties were General Use, which they were because it is two lots back – same as what was initially put out.”
- “I think we are rushing to meet a deadline and you haven’t given your counsel the complete history of what has gone on. You haven’t researched it. And the fact the town has lost, admittedly so, all kinds of records and original plans and doesn’t know what they are doing, they are only going back to 2010.”
- “That being said, at the last meeting, again it was Mr. Robinson who said, ‘Well, we are going to see’. And if we can’t figure out, or if we determine the lot is in Rural Residential, he was going to encourage Mr. Moran to withdraw his petition because the citizens’ petition is no longer needed. It is my understanding of the law a petition can be withdrawn whenever they want. If you are not going to withdraw it and you are going to put it forward on this plane, where it can’t on one side of the space say it’s Rural Residential right now, and we are going to go ahead and represent it to the Town by supporting a petition, saying it’s General Use for the purpose of the petition and then let the rest of the Town vote on it. So if the Planning Board is saying it [the five lots in question] is [in] General Use now, then say it. But to say we think it is Rural Residential but town counsel only looked back to 2010 then there is no need for you [the Planning Board] to support a petition because the petition is false on its face. And you are misrepresenting [to] the rest of the Town what the situation is. As I see it, you either need to not support the petition because you think it is Rural Residential now and we will

happily go litigate that, or you are going to admit that it is General Use now and then if you want to support or not support it and take that vote.”

Bont responded to Attorney Marshall’s complaint by reading her email letter to Attorney Marshall dated Friday, January 27, 2017, at 1:57 PM, responding to his 91-A Request for Information and indicating which records were available for his review. (See attached.)

Attorney Malia said:

- RSA 91-A is the Right to Know Law. Although Attorney Marshall’s request is somewhat interesting, it is not the Planning Board’s problem. It is the Town Manager and the Board of Selectmen’s responsibility to respond to Right to Know requests. Attorney Malia thinks the Town has complied with the law. The Town staff is responding as best they can to compile decades worth of documents. Attorney Malia did not think the Planning Board should spend time talking about the Right to Know Law.
- To the extent that it was suggested that Attorney Malia received a response to Attorney Marshall’s right to know request before he did, that is not accurate. Attorney Malia had not received any information. Attorney Malia based his legal opinion on the review of ZBA minutes of 2010 and 2012. It is Attorney Malia’s opinion, what happened at these ZBA meetings is the reason why these five (5) lots owned by Tremblay and Romprey are considered to be in the General Use (GU) District.
- Attorney Malia did not conduct an exhaustive research project into Lincoln’s zoning history. If someone finds something that these lots were originally in the General Use (GU) District or intended to be there, certainly that might affect Attorney Malia’s opinion.
- If these five (5) lots are only considered to be in the General Use (GU) District by virtue of the ZBA’s votes in 2010, then in his opinion the lots are not actually in the General Use (GU) District but are in the Rural Residential (RR) District because the ZBA does not have the authority to change zones. Only the Town Meeting has the authority to change the zoning district designation of particular lots.
- It is easy to get off track tonight, but an issue has been raised as to whether OJ Robinson is impartial. Attorney Malia asked Robinson to address that issue and then recuse himself or not. After that is done, then the Planning Board can vote on whether the Board recommends or does not recommend the petitioned article.

Hettinger asked Attorney Malia, if these lots are considered to be Rural Residential (RR) lots, what is the damage associated with voting to recommend this petition?

Attorney Malia said:

- Members of the Planning Board can vote however they want. They could vote to abstain. They could vote to recommend the petition. They could vote not to recommend the petitioned article. In Attorney Malia’s opinion, based on what he knew right then, the petitioned warrant article is null and void whatever the result of the vote is.
- If the legislative body votes to recommend the petition, based on Attorney Malia’s opinion and what he knows right now, it would sort of clarify the situation and reinforce the fact that these lots are in the Rural Residential (RR) District. If somebody wants to move the five (5) lots out of the Rural Residential (RR) District, they would have to

petition the Town to do so.

Hettinger asked if the Planning Board voted to recommend the petitioned warrant article would that vote infer that some of the members of the Planning Board feel that the five (5) lots are in the General Use (GU) District. Attorney Malia asked Hettinger to rephrase his question.

Hettinger said that if members of the Planning Board go along and say that they want the petition to “go through”, would not that decision infer that members of the Planning Board believe the lots are not in the Rural Residential (RR) District.

Attorney Malia said:

- He believes that such a decision would infer the opposite. A decision by the Planning Board to recommend the petitioned warrant article would infer that the Board agrees that the lots should be in Rural Residential (RR) District. Because the petitioned warrant article seeks to move the lots from General Use (GU) to a Rural Residential (RR) District designation, by recommending passage of this article, the Planning Board would be suggesting that the Board agrees that the lots should be in Rural Residential (RR) District.

Hettinger said he thinks that such a vote might also imply that the Planning Board members think the five (5) lots are in the General Use (GU) District.

Attorney Malia said:

- Somebody could interpret the Planning Board’s decision that way, but the issue is currently before the Planning Board. Under the state statute, the Planning Board members are supposed to take a vote about whether to recommend the warrant article. The petitioned warrant article has to go on the warrant. Attorney Malia said that Board members could abstain due to the situation we are in.

Robinson said:

- He questions Attorney Malia’s philosophy. The Planning Board recommended a Town Meeting vote twice before when the zoning district designation was not clear:
 - (1) with the David Clark and Peter Spanos land; and
 - (2) with the Conn and Govoni land.
- In those two instances, when the zoning district designation got changed from one zone to another, the Town voted at Town Meeting. Although those two votes did not necessarily clear up the past, the vote meant that the voters at Town Meeting agreed- this is the zoning district designation that we want for this property.
- By having a vote of this type for a third time, Robinson does not believe the Planning Board is recommending that the five (5) lots should be in one zone or the other. Earlier, when the Planning Board recommended those last two changes, the lots were changed from Rural Residential (RR) District to General Use (GU) District. In this case the Planning Board and the Town Meeting would just be saying that, ‘At this point, the lots are in the opposite zone than we want them to be in.’
- He believes that for the other two earlier cases, it was the consensus of the Planning Board that the lots were already in that particular zone, but the Planning Board recommended both of those Town Meeting Warrant Articles in order to “copilot” the

articles. The Planning Board and the Town Meeting voted to put the lots in this particular zone now. If there was confusion in the past, we are clearing it up now because we are voting on what zone it should be in now.

- That could be the same philosophy a Planning Board member could use whether they think the five (5) lots are in General Use (GU) District now or in the Rural Residential (RR) District now. Robinson believes that is a justifiable way to vote or an attitude to vote with. Robinson said he is not saying that members of the Planning Board should vote to recommend or not recommend the article, but if you believe it is in the zone you are trying to get changed to. The Planning Board has done that twice in the past.

Beaudin asked how far back did the town research in the town meeting warrants to see whether or not there has been any votes. Did you go back to the beginning of the Planning Board?

Town Manager Burbank said:

- The Planning Board was reappointed in 1985. The zoning ordinance called the Land Use Plan Ordinance (LUPO) was adopted in 1986. Staff has looked back to at least 1985. Bont concurred; she said she looked at warrant articles back to 1985. Burbank knows that at least one of the petitioners has gone back even further because he stood in the Town Hall and told Town Manager Burbank that he had. Staff could find no Town Meeting votes for any of those five (5) lots.

Attorney Marshall said:

- Did Town staff go back and look at what was presented to the Town for the “Lincoln Zoning Map” when they first created the ‘Rural Residential (RR)’ District? Because what he has gotten for an answer so far is that no one could find that map.
- He has affidavits from past members of the Board of Selectmen (BOS) and the Zoning Board of Adjustment (ZBA) who were members at the time the five properties owned by the Rompreys and the Tremblays were zoned for the General Use (GU). In fact, in March of 2010 when Mr. Tremblay went before the ZBA, Tremblay asked the ZBA to correct an error on the map, not to change the zone district designation, because there are some hand colored maps (and nobody knows where they came from) that were not accurate. That is what Thomas Tremblay went in to ask for. We need to go back and look at when the Rural Residential (RR) District was created. Where is that map that the people at Town Meeting were looking at when they voted at Town Meeting to adopt the Land Use Plan Ordinance? It is his client’s position that that particular map will show the Romprey and Tremblay properties to be in the General Use (GU) District.
- “Someone” put a map together after 2003. They made a mistake on that map – a mistake about what they showed on that map. There were several mistakes on that map. Several people in town (some of whom Mr. Robinson referred to earlier) came and said to the Town, “Hey, that is not what it is supposed to be!” Attorney Marshall has a letter from Tom Adams who helped put together the Village Center Plan which took ten (10) years. In his letter, Thomas Adams said that these properties – the five (5) lots owned by Tremblay and Romprey were in the General Use (GU) District. The description used to figure out the depth of that zoning district “was two lots back from Main Street”. That description is consistent with his client’s position. It is consistent with how the ZBA corrected an error on a zoning map. “They didn’t change the zone; they changed how it

was drawn on the map that someone had hand colored in and no one at your table so far has told me ‘yes, that is the map that was presented to the Town [Meeting] when they created the Rural Residential zone to begin with, or when you voted on the Master Plan in 2003’.”

Town Manager Burbank said:

- Attorney Marshall is correct. Almost sixty (60) hours of staff research has gone into searching town records for this information. Staff found maps that are clearly hand colored. The old records from that time period are haphazard at best. The Town staff has exhausted their time to spend on this task. Anyone is welcome to come in and look through the documents found by the staff. Anyone who wants to can spend days poring over the documents if they want.
- There is no formal record or map that Town staff thinks should be there. To say what Attorney Marshall is saying, but he is right.
- Burbank does not know what went on back then; he was not around back then. Everything that Town staff found clearly shows there was no vote at a Town Meeting, which we believe is required, to establish those lots as something other than Rural Residential (RR). “It appears to me, and I don’t mean to be flip, it appears that folks had the opinion that if they talked about something long enough it will become law. That is the sense I get, going back as an historian. I don’t know if that is true or not. You might consider me flip, but I’m not. There was a ton of conversation but nothing was [legally] codified. Nothing that we could find indicates it [missing map] was codified. Unless someone can miraculously pull this map or this drawing out of the air, it is not here in this building. It is not.”

Attorney Marshall said:

- Attorney Marshall has affidavits from people who worked on these plans back then. The affidavits address what was presented to the town voters when the Planning Board created these zones. According to his affiants, these five (5) lots were in the General Use (GU) District.
- Attorney Marshall has a 2010 memo from the then Town Manager. He does not know who the Town Attorney was at that time. At that time the Town Attorney told the Town Manager that the ZBA needed to clear up the discrepancy with the mistakes on the plan that was shown. That same Town Attorney said, “Take a look at some of the existing tax maps”.
- It was after 2010 memo that that the ZBA said, “Yes they are General Use. We are confirming the General Use. We have to make corrections to the errors in the map.”
- Attorney Marshall said, “To correct an error on a map does not need to go back to Town Meeting because you are not changing the zones. The Zoning Board who is in charge of enforcing the zoning ordinances and puts all this stuff together to begin with, knows what they have for boundaries. They have a mistake on a plan that somebody colored. They don’t need to go back to Town Meeting to correct that.”

Myles Moran said:

- Moran was lucky enough to spend five (5) or six (6) hours at the Town Office on Friday to go through all the documents that were compiled by Town staff. The list of items he wanted to see pursuant to his Right To Know Request under RSA 91-A, was not as long as Attorney Marshall's list. Moran said that he went through all the minutes for the ZBA meetings. He "saw where what they were talking about occurred".
- Moran also spent time prior to that in the Town library looking at Town Reports starting in the 1980s. He went through all of the minutes of annual Town Meetings looking for amendments that addressed the zoning district designation for these five (5) lots. He did not find any.
- Moran then spent some time looking at the maps. The maps that are on file in the Town Hall by year, are very consistent all the way up to 2010. All this property that we are talking about (i.e., five lots owned by Tremblay and Romprey) were shown to be "in this white zone known as the Rural Residential zone". Those maps are very consistent.
- Moran went back to a map from 1986 done by North Country Council that also shows the areas. "It is a little different. It also shows some vacant land, some mixed use, some commercial, but this land was all in the middle of the 'residential land' in 1986."
- Moran said the deed restrictions that were put on this land by Sherman Adams in 1961 or 1962 restricted this land to "rural residential housing" until the deed restrictions expired in 1985. From the time the property was owned by the Parker Young Company forward to 1985 there was no discussion whatsoever because these lots all had deed restrictions. From 1985 forward, everything Moran saw defined in his search shows that consistently the lots were zoned "Rural Residential (RR)".
- The last time Attorney Marshall was at a Planning Board meeting (January 11, 2017) he complained about how his clients had to pay increased property taxes because their land was being taxed for being in the General Use (GU) District. Moran spent some time going through the tax cards. On the tax cards for those properties in the 1980s, 1990s through today, all of those lots were tagged as "Rural Residential". So Attorney Marshall's clients have not paid any increased taxes because they were in the General Use (GU) District. The change in the zoning district designation from Rural Residential (RR) to General Use (GU) has had no effect there. That stuff is plain. Its right in there. It is as consistent as it has been.
- The only changes to the zoning district boundary lines happened during the period between 2010 and 2012 when the zoning district boundary line around these five (5) lots were changed. First, the zoning district boundary line for General Use (GU) moved back further from Route 112 and encompassed the three (3) Tremblay lots. That change happened because the ZBA voted to change the zoning district designation at a ZBA meeting; it was very clear. The ZBA voted to change the zoning district designation for the three (3) Tremblay lots from Rural Residential (RR) to General Use (GU). On the maps the zoning district designation for those three (3) lots got changed.
- In 2012 Romprey wanted the zoning district designation for his two (2) lots changed to General Use (GU) to match Tremblay's lots. When Romprey could not get the ZBA to do what he wanted it to he walked out of the ZBA meeting. The ZBA "stopped that action there because he left the meeting." Mysteriously, in 2012 that zoning district

boundary line changed again. That hand drawn zoning district boundary line then encompassed Romprey's two lots to match the three Tremblay lots that had been done by the ZBA two (2) years earlier. That is the way the story goes. You can talk all you want; it is what it is. Those are residential homes back there. The residential homes have been there since the Parker Young Company was here and Sherman Adams owned them. Mr. Rutherford developed the property and put in the five (5) lots. He does not see how the Planning Board could not recommend this. "You are righting a wrong here."

Chair Spanos asked if Moran had found a zoning map from 1986.

Moran showed the map dated 1986 from North Country Council to the Planning Board.

Town Attorney Peter Malia said:

- Attorney Malia disagreed with Attorney Marshall on the point when Attorney Marshall said that the Zoning Board just merely corrected an error on the zoning map, they didn't change the zone. If you read the minutes it is pretty clear that the ZBA approved motions to define these lots as being in the General Use. So Attorney Malia thinks that the ZBA did rezone the lots which Attorney Malia does not think the ZBA had the authority to do.
- Attorney Malia had a copy of Town Manager Peter Joseph's 2010 memo. Peter Joseph was the Town Manager at the time. There is no opinion from the Town Attorney attached to the memo. Town Manager Joseph references that he was advised by the Town Attorney on a number of different things, but the memo does not necessarily say that the Town Attorney said that the ZBA can change zoning districts.
- Attorney Malia believes in Town Manager Joseph's memo, Town Manager Joseph misinterpreted RSA 86 as applied to the Land Use Plan Ordinance. The sections referenced are to be used when someone has an application pending before the ZBA and there is some question as to which particular zoning district the property is in that the ZBA has to decide the application on, but the ZBA does not have the authority to just hear requests by town residents to just change their zone from one zone to another, which it appears is what they did.

When and How Did Changes Take Place?

Chair Spanos said that the zoning designation for the five (5) lots was changed in 2010 and in 2012 when the Rompreys came in about their garden lots.

Town Manager/Planner Burbank said that the change on the tax maps involved the three (3) Tremblay lots in 2010.

Chair Spanos said that it was the five (5) lots [owned by Rompreys and Tremblays] in 2010 and Rompreys' garden lots in 2012.

Town Manager/Planner Burbank said no, the three (3) Tremblay lots were changed in 2010 and the two (2) Romprey lots were not changed on the maps until 2012.

The Board discussed when the changes happened and looked at minutes from the ZBA of 2010 and 2012.

Attorney Marshall on behalf of the Rompreys said:

- Attorney Marshall respectfully disagreed with Town Attorney Peter Malia's review of the ZBA minutes. When Tremblay went before the ZBA, he specifically stated that he

disputed the zoning district designation for his three (3) lots as shown on the map. It is in the ZBA's own minutes. If Attorney Malia read all of the research the ZBA did back then, including the letters and comments the ZBA got from people who were involved, he would see that the ZBA said the General Use (GU) District boundary line was supposed to be "two (2) lots back"; that is where the General Use (GU) District's boundary line was. The ZBA "go to correct the zoning with the map because that is what was before them". The only issue before the ZBA was to correct the error on the map. That is what was in place. The ZBA has the legal authority to do it "and that is how it has been".

- That was not the first time the ZBA made a decision to "fix" the zoning district designation of a lot. In 1999 (before the Rutherford's), when the Lahout's Plaza was being developed and the Town had a Planning Board, the owner/developer researched the Romprey property because "they needed a piece of land and the deed to the piece in front was actually first leased and then deeded in 2002". The only way the Planning Board could approve the lot line adjustment "was if the property was in General Use" (GU) District. Back then, the Planning Board [must have] determined that the Romprey property was zoned General Use (GU) because "they allowed that transfer to go."
- The Town has a commercial "development, (i.e. Lahout's Plaza) out there in front of the road on a piece of land (from what this Planning Board is now saying) that was in the Rural Residential" (RR) District. Based on this subsequent Town Attorney's opinion, that commercial development [Lahout's Plaza] must have been an illegal development because Romprey transferred some Rural Residential (RR) District property and added it onto General Use (GU) District property.
- Back in 1999 while that commercial development (i.e. Lahout's Plaza) was going through the Planning process, the Planning Board looked at the lot and said, "No. Romprey's property is [in] General Use (GU) so they can pull [off] a piece of that [lot] to allow the development to take place." Attorney Marshall said, "So the first time 'this' came up is not [in] 2010."

Chair Spanos said:

- On February 17, 2010, the ZBA changed the zoning district designation for the two (2) Romprey lots from Rural Residential (RR) to General Use (GU). The ZBA made the decision then. On page 3 of the February 17, 2010 ZBA minutes it says:
 - "Thomas Smith made a motion to define lots 117-19 and 117-25 as General Use. The vote was seconded by Ron Comeau and the vote was unanimous in favor of the motion."
- Then on March 17, 2010, a month later, Mr. Tremblay came in to see the ZBA and said he wanted "the same thing that Mr. Romprey got".

Whether Robinson Should Recuse Himself:

Robinson said:

- Robinson asked Attorney Marshall for a further explanation so that he could have a better understanding of the reason why Attorney Marshall asked him to recuse himself. Robinson did not understand. Robinson thought that his comment at the last meeting was that the Planning Board has gone through this process twice before. The process for

changing the zoning district designation back to what people believed it used to be was supposed to be done through a vote at Town Meeting.

Attorney Marshall said:

- According to Attorney Marshall, Robinson was asked a question from the field, “What if the zoning district designation for these five lots turns out to be Rural Residential (RR) now, based on something in the past?” In response Robinson said, “Well, in the past when the Town would treat an area of the town as a certain zone, and ...because there was a question, and we couldn’t go back and find a specific [Town Meeting] vote on it, what we would do is the Town would post a warrant [article] for the next Town Meeting saying ‘Hey, this is how we treated it. We can’t find out for sure what the vote was so we want to dot our ‘I’s’. We don’t want to change anything. We just want you to vote that we are still treating it this way.’ Then Robinson specifically said to whomever asked the question, “I can guarantee you, we will not fix this one that way.”

Robinson said he thought that Attorney Marshall misunderstood what he said. Robinson would have said, “I can’t guarantee you that we will fix it this way.”

Attorney Marshall said that was not how he understood Robinson’s comment.

Robinson said that the meaning of his comment was more like “I can’t guarantee it can be fixed this way because I can’t guarantee the outcome of a Town Meeting vote.

Attorney Marshall said that was not what he heard so he would respectfully disagree.

Robinson asked Attorney Marshall what he heard.

Attorney Marshall said:

- He heard the word “guarantee” and that “The Town wasn’t going to fix it that way”, meaning Robinson was not going to go out, when somebody asked why, and Robinson said ‘because clearly a bunch of you disagree with it being General Use’ so we are not going to fix it the same way we fixed the last one.

Robinson said:

- He said he could not guarantee that it would get fixed that way. Robinson’s point was clearly because people in the audience were not going to vote to fix the zoning district designation by putting the five (5) lots into the General Use (GU) District.

Attorney Marshall said:

- “Again, I’m not trying to pick a fight. That is not what I heard and not the subsequent comments that you made that I have in my notes.”

What Does “Two Lots Back On Main Street” Mean?

Moran addressed the “two lots back on Main Street” comment by showing the 1946 Churchill map of the downtown Lincoln to the Planning Board.

Moran said:

- Moran has been in Lincoln for forty (40) years. “It has always been known that ‘yes, two (2) lots back on Main Street was roughly the [commercial] zone’.” Moran wanted to show the Planning Board the area in question as it existed in 1946 and how the

residential houses in that area were laid out in the Churchill plan back then.

- Moran directed the Planning Board to look at the area on the map where Lahout's Plaza is currently located and then where Maple Street is located. Then he asked them to focus on Cross Street. Moran said Cross Street is a good indication of where the boundary line or the division is between the commercial area and the residential area. Cross Street is a very good demarcation of the division between the residential and the commercial areas – showing “two lots back from Main Street”. (Then there are these other side streets.) When the owner/developer constructed what is now known as “Lahout's Plaza”, they took “these little X lots” – the row of three (3) what are called “garden lots” – that Lahout needed to add to the lot in front in order to have enough land to build Lahout's Plaza.
- Moran said that the row of three little lots shown on the Churchill Plan are what is known as the “garden lots”. Moran believes that Romprey also bought those garden lots in 2012.
- Moran said to keep in mind that while people talked about the “commercial zone” being “two (2) lots back on Main Street”, what Romprey and Tremblay are proposing for their five (5) lots as being in General Use (GU) far exceeded the idea of “two (2) lots back”. Moran suggested that the Planning Board measure “two (2) lots back along the north side of Main Street”. “Two (2) lots back” measures between two hundred feet (200') and two hundred fifty feet (250') back from the edge of Main Street. When the Planning Board “jumps up” to these five (5) properties, if the five (5) lots are included in the commercial zone, the commercial zone suddenly measures almost three hundred feet (300') back. If the Planning Board members included the five (5) Tremblay and the Romprey lots in the General Use (GU) zone, then the zone would measure up to seven hundred feet (700') feet from Main Street. It does not make any sense. Main Street goes straight. Pollard Road curves in until it hits Dodge Place. Back then when they were talking about enacting a zoning ordinance there was nothing commercial beyond Lahout's Plaza; it was all residential housing. If you want to count “two (2) lots back,” go back to what the lots were historically. To build Lahout's Plaza “they already decimated five (5) lots back”. Why would we want to start counting “two (2) lots back” from there? Romprey has missed the idea of “two (2) lots back” by hundreds of feet.
- Moran showed the Planning Board where Patty Jo Papio-Ouelette's house used to be on the map. Her house got moved out of there so that Romprey could construct Lahout's Plaza. Moran asked Patty Jo Papio-Ouelette if her house was there and got bought up to make room for what is now known as Lahout's Plaza.

Patty Jo Papio-Ouelette confirmed that was correct.

- Moran explained that the 1946 Churchill map shows what that area looked like when the Parker Young Company laid out all the houses and lots in town, including the garden lots. Morgan said, “You need all the history.”

Robinson asked if there is an existing copy of the 1991 post-Town Meeting Zoning Map which would have been the first zoning map that included a Rural Residential (RR) zone on it?

Moran showed the Planning Board a map from the 1991 Master Plan created for the Town of Lincoln by North Country Council. The map was dated 1986.

The Planning Board spent a few minutes looking at the 1991 North Country Council map. The map was placed on a table for the audience to view.

Possible Corroboration Using Property Tax Cards:

Paul Beaudin asked if there were tax cards back to 1991.

Moran said he thought there were.

Bont said that although another staff member got the box with the assessment cards out per Moran's request, she did not have time to go through all of the property tax cards for all (5) five lots so she did not know.

Request for Robinson to Recuse Himself:

Paul Beaudin said that he does not believe that Robinson has to recuse himself.

Chair Spanos said that it would be Robinson's decision.

Paul Beaudin asked if the Planning Board could vote on whether they felt Robinson should recuse himself.

Chair Spanos said that it would be up to Robinson if he wanted to ask the Planning Board for a vote.

Robinson asked if there was anyone in the room (other than Attorney Marshall) who thought he said that he could guarantee that he can't get this through (or whatever Attorney Marshall was implying). Was it clear that he was saying, he can't guarantee how the Town Meeting vote would turn out?

Selectman Ham: "That is exactly it. Absolutely!" (Others in the audience also nodded or verbalized their agreement.)

Paul Beaudin: "It was clear."

Robinson: "Generally understood?"

Selectman Ham: Yes. (Others in the audience also nodded or said "Yes.")

Robinson: "Then I would ask the Planning Board to vote because I don't believe that there is a case to be made that I should recuse myself."

Recordings of Planning Board Meetings:

Paul Beaudin asked if the recording of the Planning Board meeting from January 11, 2017, was still intact. Recorder Tanner said that since the Planning Board meeting minutes from January 11, 2017, have not been approved yet the recording is still intact. Chair Spanos asked Tanner to please hold on to that recording.

Is Planning Board Vote to Recommend or Not Recommend Recusal Binding?

Chair Spanos asked the Planning Board to take a non-binding vote. Paul Beaudin asked why the Planning Board would take a non-binding vote. Chair Spanos said that it is the law, the Planning Board cannot take a binding vote. Robinson said that even if the whole room voted for him to step down (or recuse himself), he would do so, but the law says that he does not have to. Chair Spanos said that it is a non-binding vote. Robinson asked the Planning Board to take a vote as to whether or not he should sit for this hearing.

Paul Beaudin explained that he confused the vote as to whether Robinson should recuse himself with the vote on the petition and apologized.

Motion that Mr. Robinson should not be required to recuse himself.

Motion: John Hettinger Second: Norm Belanger All in favor: 3-0

Motion carries.

Motion to close the public hearing.

Motion: John Hettinger Second: Norm Belanger All in favor: 4-0

Motion carries.

Planning Board Discussion:

Hettinger said he agreed with Robinson that the citizens' petition should go to Town Meeting and let voters at Town Meeting vote on it. Grant and Belanger also agreed.

Robinson said:

- If the decision to designate the five (5) lots as General Use (GU) instead of Rural Residential (RR) was "trackable" to show that the zoning district designation for the lots was legally changed to General Use (GU) at some point, he would fully oppose this citizens' petition because it violates the rights of those land owners who have had a piece of land in the General Use (GU) District for a long time; he would change his decision.
- We went back to the 1991 maps. On the 1991 map we see that these five (5) lots were in Rural Residential (RR). We have found no evidence other than the 2010 and 2012 Zoning Board minutes that the zoning district designation for these five (5) lots was changed at a ZBA meeting.
- Robinson asked Attorney Marshall if he had any evidence that the zoning district designation for these five (5) properties were ever changed at a Town Meeting.

Attorney Marshall said, "You have already closed the public hearing and I am clear that this is going to court and I do not want to screw up the procedure. Just go ahead and vote."

Chair Spanos said that there was no evidence about what zoning district these five (5) lots were in from 1986 to 1991 before "Rural Residential" (RR) became a zone.

Robinson said that the property was not in the Rural Residential (RR) District, because the Rural Residential (RR) District did not exist before 1991.

Chair Spanos asked what the zone was from 1986 to 1991.

Robinson said:

- He thought what the zone for the properties from 1986 to 1991 was irrelevant.
- The Town voted in 1991 to put this in the new zone that was termed "Rural Residential" (RR). What zoning any of these lots were before 1991 then is irrelevant because these lots were legally changed and documented in 1991 to "Rural Residential" (RR).
- If there is evidence of a change in the zoning district designation for these lots after 1991, the Planning Board should open the public hearing and have people present their evidence right now. Because if the evidence is there and the evidence is clear, it will

affect how he votes.

Motion to open public hearing to hear evidence of zoning changes after 1991.

Motion: OJ Robinson Second: John Hettinger All in favor: 4-0

Robinson asked if there was anyone in the room who could present evidence to the Planning Board or tell the Planning Board a date when the zoning district designation change was voted on in a Town Meeting.

Attorney Marshall said:

- You missed my argument before. According to affidavits from people who were putting together the 2003 Master Plan, when this Town first started the Rural Residential (RR) District zone, the colored drawing the Town has (i.e., hand colored 1991 Tax Maps) was drawn up and colored after the 1991 Town Meeting vote. What the Town does not have is the plan and the [zoning district] boundaries that were presented to the Town voters at the Town Meeting that the voters were actually going to be voting on. So what his client is saying is, and what his client has been saying all along is: the colored drawing that was created after a town meeting vote to create the Rural Residential zone, was done incorrectly.
- The people who run the Planning Boards and Zoning Boards and who were working on the Master Plan back then have all said, consistently, that the drawing that was created after the Town Meeting had mistakes on it.
- “Board after Board has supported that they corrected several of them.”
- In 1999 the Planning Board members determined, based on their research back then (which is far better than any research that you are going to do now because they were the people involved with it), that the Romprey property was supposed to be in the General Use (GU) District; the Romprey property was not Rural Residential (RR). That is why the Planning Board allowed Romprey to take a piece of property off of his lot and attach it to the piece in front so that the development of Lahout’s Plaza could go through.
- You are looking at the wrong time frames. The color drawing you have was created after the 1991 Town Meeting.
- The Town does not have in its records the map that was actually drawn up prior to the 1991 Town Meeting and that was the basis for the very brief written warrant article back then that created the Rural Residential (RR) District. Everybody involved with the process back then said that the 1991 map does not reflect what the Planning Board presented to voters prior to the Town Meeting vote.

Robinson said:

- So, Attorney Marshall’s client is saying the mistake was made between the Town Meeting vote in March of 1991 and the drawing of that map in April of 1991? So within the course of a month or a month and a half was when this mistake was made?

Attorney Marshall said, “Yes, whenever they created the hand colored plan.”

A member of the audience asked that if that was the case, wouldn’t they have caught that mistake back in 1991 and fixed it in 1991 instead of all these years later?

Attorney Marshall said:

- Someone would not catch the mistake until they tried to do something with their property. That is what happened in 1999 when the developer of Lahout's Plaza, located in front of Romprey's property, was trying to buy some land from Romprey. When the Planning Board looked at whatever plan they were looking at back then, they said, "No, Romprey's [land] is General Use (GU)".
- The Town lost a bunch of records. The Town does not have most of the records from back then. All the Town has is this hand colored plan (1991) created after the Town Meeting.

Paul Beaudin said:

- In the absence of any facts or documents to the contrary that show the delineation of the various zones using either latitude and longitude or metes and bounds descriptions, the map that has always been used by the Planning Board should control. This is probably a question for the Town Attorney: is not that map (1991) the map that the Town should go by?

Attorney Malia said:

- In the absence of the map that was presented to the voters when they voted (which he was hearing from Attorney Marshall possibly was different from the 1991 hand colored map that was drawn up after Town Meeting) the 1991 map is the map that controls.
- Unfortunately, the Town does not have the map that was presented to the voters prior to the vote at Town Meeting. If the Town had that map we could compare that map to the 1991 map that the Town does have and see if the maps are the same or different.
- But in the absence of that map, I do not think that affidavits suffice. He thinks the Town has to go by the 1991 map as the controlling map.

Paul Beaudin said:

- There were no metes and bounds descriptions of the zones or anything else that described what areas were in Rural Residential (RR) or what areas were in Village Center (VC).
- But in thirty (30) days Mr. Marshall says that that map could change; that seems kind of tough.

Chair Spanos said that he believes that Attorney Marshall was saying that the map was incorrectly drawn; he was not saying that somebody sabotaged it.

Paul Beaudin said that maybe this is a good lesson for future Town Meetings. If the Planning Board is going to propose that the Town change the boundaries of a zoning district that the description should not be limited to a map; it should have a description that includes something like metes and bounds.

Motion to close the public hearing.

Motion: OJ Robinson

Second: Jim Spanos

All in favor: 4-0

Hettinger asked if the Planning Board could see what data Attorney Marshall had versus the contradictory information the Town staff had been able to find. If Attorney Marshall has all the stuff he is talking about, why can't we look at his information?

Robinson said:

- Was Attorney Marshall saying that the change was made between the March 1991 Town Meeting and April 1991 drawing of that colored map? That is a six week period when someone either made a mistake or did not make a mistake in drawing that 1991 map according to what was brought to the voters at Town Meeting.
- Now if Attorney Marshall gets affidavits from people eight (8) or nine (9) years after the 1991 Town Meeting to see what their intentions in 1991 were that would be one thing. Now his is talking about getting affidavits from people more than twenty-five (25) years after a Town Meeting vote in order to determine what the intention was in 1991. I think if there was a discrepancy it should have been fixed in 1991 or 1992 when people saw that they were in the wrong zoning district or that the 1991 map was colored wrong. If that was my land I would have done it in 1991, if I was aware of it, or I would have done it in 1992.

Attorney Malia said:

- “You have what you have.” The public hearing has been closed. Someone should make a motion to approve the petitioned article. Then you vote yes or no or abstain.

Robinson said that if we vote “yes” it goes on the Town Meeting Warrant as “recommended by the Planning Board”. If we vote “no” or there is a tie, because people abstained, then it goes on the warrant as “not recommended by the Planning Board”.

Chair Spanos said “Motion to approve the petitioned warrant article that it not be approved by the Planning Board. Will someone make that motion?”

Attorney Malia said that the motion should be in the affirmative, “Motion to approve the petitioned article”.

MOTION to approve the petitioned Warrant Article.

Motion: John Hettinger

Second: OJ Robinson

All in favor: 4-0

Chair Spanos abstained.

The petitioned article will go on the warrant as recommended by the Planning Board.

Motion for a 5 minutes recess.

Motion: OJ Robinson

Second: John Hettinger

All in favor: 4-0

Approval of the minutes of January 11, 2017.

Chair Spanos proposed the following amendment to the minutes: “Chair Spanos said that the discussion should be centered on the petition.”

Motion to approve the minutes of January 11, 2017 as amended.

Motion: OJ Robinson

Second: John Hettinger

All in favor: 4-0

IV. NEW BUSINESS:

A. NH Municipal Technical Assistance Grant (MTAG) Program

Town Manager/Planner Burbank said that the **NH Municipal Technical Assistance Grant (MTAG) Program** is a grant program. He was surprised that the State was sending out the information this time of year because it is too late to put an article on the annual town warrant to

come up with a match. It is town meeting time so any grants that require matching funds would have to wait until next year before the Town could come up with a match. It might be good to get the information if Bont has time in case the grant monies are offered next year. He does not know if Lincoln has a project that would fit in the criteria or not. Bont said she did not know if this money has set aside. Given the new federal administration any grant monies might disappear.

- 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.

VI. ADJOURNMENT

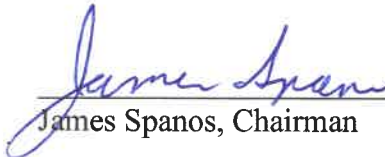
Motion to adjourn at 7:22 PM

Motion: Norm Belanger Second: OJ Robinson All in favor: 5-0

Respectfully submitted,

Wendy Tanner,
Planning and Zoning Recorder

Date Approved: 02/22/2017


James Spanos, Chairman

From: Peter Malia [<mailto:pmalia@hastingsmalia.com>]
Sent: Tuesday, January 17, 2017 4:22 PM
To: planning; townmanager
Subject: Zoning Issues

Carole & Butch:

The minutes of a March 29, 2012 Lincoln ZBA meeting indicate that Patricia McTeague said that zoning changes should be made at a town meeting. Patricia was right.

In my opinion Article VI, §A of the Lincoln LUPO was misinterpreted in February and March of 2010 when the ZBA voted to re-zone several lots to General Use. The ZBA acted *ultra vires* when it did so. That section of the LUPO is only to be used when there is doubt about the location of a parcel that has an application pending before the ZBA. The application would have had to have been brought pursuant to the ZBA's powers, as described in 674:33 (variances, appeals of administrative decisions, etc.). Property owners in Lincoln cannot otherwise request the ZBA to make zoning changes – the ZBA does not have that authority.

The zoning ordinance, and district boundaries, can only be changed by a town meeting vote. See 675:3 and 4.

Correct me if I'm wrong, but my understanding is that there is a petitioned article for inclusion on this year's town meeting warrant to change the following lots from GU to RR: 16, 17, 18, 19 & 25.

If these lots are only considered to be in the GU district by virtue of the ZBA's votes in 2010, then in my opinion they are not actually in the GU district – they are still in the RR district.

The article still has to be placed on the warrant, so I would recommend that the PB vote to approve the article, since it seeks to restore the lots to the district that they are legally in. However, ultimately this article is non-binding. In other words, even if this article does not pass, these lots will still be in the RR district, because they were never legally changed to the GU district (unless there has been a town meeting vote since 2010 to do so).

Peter

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planning

From: planning
Sent: Friday, January 27, 2017 1:57 PM
To: Marshall, Bruce J. (bmarshall@damantelaw.com)
Cc: townmanager (townmanager@lincolnnh.org); Spanos, James (Jim) (james.spanos@coldwellbanker.com)
Subject: FW: NH RSA 91-A Requests for Information

Attorney Bruce J. Marshall (damante@damantelaw.com)

Dear Attorney Marshall,

We gathered all of the documents/records we could find so far pertaining your four (4) NH RSA 91-A requests. You are welcome to come into the office and start going through them.

- You may not take any of the original documents out the office.
- You are welcome to use our copier to copy whatever documents you want at \$.50 per page.
- You are welcome to bring your own copier.
- You are welcome to come and take photos of the documents yourself.

We have received the following four (4) requests that I have mapped out as follows to confirm that I understand your requests correctly:

1. Letter dated December 30, 2016, received January 3, 2017, requesting:

- All Town and Planning Board records for the past 10 years (2006 – 2016) related to the information, including but not limited to the following subject matters:
 - Master Plan
 - Zoning Districts
 - Zoning Petitions
- Types of documents you are looking for: All communications and all types of communications:
 - Written
 - Aural
 - Visual
 - Electronic
 - Other physical form relating to, but not limited to, the following:
 - E-mails
 - Draft decisions
 - Correspondence
 - Memorandums
 - Notes
 - Meeting minutes
 - Tape recordings
 - Related hearings
 - Email communications between:
 - Town officials
 - Town Officials and Planning Board Members
 - Town Officials and the public
 - Planning Board members
 - Planning Board members and the public

2. Letter dated January 13, 2017, received January 17, 2017, requesting:

- All Select Board discussions and/or actions regarding the zoning of the Romprey and Tremblay properties over the past year.
- Types of documents you are looking for: All communications and all types of communications:
 - Written
 - Visual
 - Electronic
 - Other physical form relating to, but not limited to, the following:
 - E-mails
 - Draft decisions
 - Correspondence
 - Memorandums
 - Notes
 - Meeting minutes
 - Tape recordings
 - Related documents
 - Email communications between:
 - OJ Robinson and Miles Moran
 - OJ Robinson and the public
 - OJ Robinson and others
 - Select Board members and Miles Moran
 - Select Board members and the public
 - Select Board members and others
 - Town Officials
 - Town Officials and Miles Moran
 - Town Officials and the public
 - Town Officials and others
 - Planning Board members
 - Planning Board members and Miles Moran
 - Planning Board members and the public
 - Planning Board members and others
 - Zoning Board members
 - Zoning Board members and Miles Moran
 - Zoning Board members and the public
 - Zoning Board members and others

3. Letter dated January 13, 2017, received January 17, 2017, requesting:

- The Town's involvement with the RSA 91-A request submitted by Miles Moran, as reported by the Planning Board at their January 1, 2017, meeting.
- Types of documents you are looking for: All communications and all types of communications:
 - Written
 - Visual
 - Electronic
 - Other physical form relating to, but not limited to, the following:
 - E-mails
 - Draft decisions
 - Correspondence
 - Memorandums
 - Notes
 - Meeting minutes

- Tape recordings
- Related documents
- Email communications between:
 - Town Officials
 - Town Officials and the public
 - Town Officials and others
 - Planning Board members
 - Planning Board members and the public
 - Planning Board members and others
 - Zoning Board members
 - Zoning Board members and the public
 - Zoning Board members others

4. Letter dated January 13, 2017, received January 17, 2017, requesting:

- Wendy Tanner's involvement with Romprey and Tremblay properties and related zoning requests, actions, right to know requests, development and Town records.
- Types of documents you are looking for: All communications and all types of communications:
 - Written
 - Visual
 - Electronic
 - Other physical form relating to, but not limited to, the following:
 - E-mails
 - Draft decisions
 - Correspondence
 - Memorandums
 - Notes
 - Meeting minutes
 - Tape recordings
 - Related documents
 - Email communications between:
 - Wendy Tanner and her family members
 - Wendy Tanner and Miles Moran
 - Wendy Tanner and Town Officials
 - Wendy Tanner and Planning Board members
 - Wendy Tanner and the public
 - Wendy Tanner and/or between each other (not sure what this means)

I heard from only five (5) of the eight (8) current members of the Planning Board.

1. James Spanos, Chair – I have not heard from the Chair.
2. Patrick Romprey, Vice-Chair – I have not heard from the Vice Chair.
3. OJ Robinson, Selectmen's Representative – OJ said he does not have any e-mails about these matters on his computer.
4. John Hettinger, Clerk – John said the hard drive on his computer crashed recently so he no longer has any older or newer digital files.
5. Paula Strickon said she only has whatever e-mails I have sent her (and all other members of the Planning Board including Pat Romprey, your client) in preparation for meetings and hearings.
6. Ron Beard, Alternate - Ron said he does not have any e-mails about these matters on his computer that are not whatever e-mails I have sent him for meetings and hearings.

7. Norman Belanger – Norm said he does not have any e-mails about these matters on his computer that are not whatever e-mails I have sent him for meetings and hearings.
8. Callum Grant, Alternate – I have not heard from Callum Grant.

Despite requests, I still have not heard anything from three (3) Planning Board members: Alternate Callum Grant, Chair Jim Spanos or your client, Pat Romprey.

I have only heard from one (1) former Planning Board member who served over the past ten (10) years. Deanne Chrystal has had more than one computer crash since she served as a Planning Board member. She has no documents or emails. I am not sure that the old email addresses I have for the rest of the former Planning Board members are still working. Thomas Adams died. One of the e-mails that I sent to Mr. Cook was rejected because the address were rejected.

I did not define “town officials” as anyone other than Select Board, ZBA & Planning Board. I assume by the term, “Town Officials” you did not mean for me to include officials like the Town Treasurer, the Budget Committee Members, the Library Trustees, the Town Clerk, the Public Works Director, or any of the many other town officials who have had little or no input in relation to this matter. Please let me know if you think otherwise.

I checked with Tax Collector/Town Clerk Johnna Hart. She found a notebook with Town Meeting Minutes from 2000 to 2016 and there are some petitions in the notebook too so we are assuming that petitions in the past were stored in that notebook. We could not find a similar notebook for earlier dates. Susan Whitman was very organized, but she did not come to work at the Town Offices until 2002. We have to leave that book in the vault, but when you get here we will pull it out for you. Just remind us.

We still have to finish gathering all of the e-mails from our computers. In 2012 the server crashed and the earliest e-mails I have on the planning computer are from mid-year of 2012 forward. We asked our computer IT guys about the possibility of accessing old digital files. He said that the only emails that can be captured are those in the current emails in our Outlook programs (after 2012) and any emails that have been transferred to “One Note”. I have no documents in “One Note”. We have been having difficulties with some of our computers – my computer in particular. The IT guys replaced my computer on Tuesday. They are still installing the rest of the data and programs that need to go back on the computer. We will finish collecting the emails and printing them out as soon as we can.

Carole

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