

**LINCOLN PLANNING BOARD  
REGULAR MEETING MINUTES****APPROVED****WEDNESDAY, APRIL 10, 2019 – 6:00PM****LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

**Present:** Chairman Jim Spanos, Vice Chair Joseph Chenard, Selectmen's Representative OJ Robinson, Member Mark Ehrman, Member Stephen Noseworthy, and Alternates Deanne Chrystal and Paul J. Beaudin II.

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Town Planner Carole Bont, Town Manager Butch Burbank, Fire Chief/Forest Fire Warden/Code Enforcement Officer/Health Officer. **Ronald R. (Ron) Beard** – (*sat in the audience*)

**Staff Excused:** Ellyn Franklin, Recorder

**Town Consultants:** **Town Attorney**, Peter J. Malia, Jr., Esq., Hastings Malia Law Office, PA, 376 Main Street, PO Box 290, Fryeburg, ME 04037-0290; **Town Engineer**, Raymond H. Korber P. E., KV Partners LLC, PO Box 7721, Gilford, NH 03247-7721 – (*sat at the table*)

**Guests:**

- **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).
- **Brad Craig**, nonresident and General Manager at Holiday Inn Express & Suites in Bartlett, NH & Lincoln, NH.
- **Michael (Mike) J. Donahue, Jr.**, resident, 58 Maltais Farm Road, Lincoln, NH 03251, works for Town of Woodstock Public Works Department and for father, Michael (Mike) J. Donahue, Sr., (**ABUTTER TO LOT IN LINCOLN INDUSTRIAL PARK**) nonresident, 68 Potato Hill Road, Woodstock, NH 03293 and owner of J&M Donahue, Inc. (Excavating & Concrete), 1162 Daniel Webster Highway, PO Box 56, Woodstock, NH 03293-0056, and winning bidder for contract to develop the Lincoln Industrial Park in exchange for two (2) lots and rights of first refusal (RFR) for the other lots. Father is a co-owner of the first two lots on the right on Arthur Salem Way in the Lincoln Industrial Park: (1) "Lot 1" Map 109, Lot 025 (0.49 Acres) and (2) "Lot 3" Map 109, Lot 024 (0.48 Acres) with Bobbi Anne Donahue.
- **Dennis M. Ducharme** – resident, at RiverWalk Resort at Loon Mountain. Developer & President, RRP, RiverWalk at Loon Mountain, LLC, (**Map 118, L044**) at 22 South Mountain Drive, Mail: 33 Brookline Road, PO Box 636, Lincoln, NH 03251-0636. Developer & President of 10 InnSeason Resorts, headquartered in Hyannis, Cape Cod, Massachusetts, including two (2) InnSeasons Resorts in the Town of Lincoln: (1) InnSeasons Resorts Pollard Brook at 33 Brookline Road (**Map 122, Lot 002 & Lot 003**), Lincoln, NH and (2) InnSeasons Resort South Mountain at 23 InnSeason Drive (**Map 118, L047**), Lincoln, NH.
- **Daniel Gozdoff**, resident, PO Box 1503, Lincoln, NH 03251-1503 and co-owner of 19 Birch Road #1 (Map 129, Lot 032) with Marjorie R. Gozdoff of PO Box 1503, Lincoln, NH 03251-1503.

- **Marjorie R. (Margie) Gozdoff**, resident, PO Box 1503, Lincoln, NH 03251-1503 and co-owner of 19 Birch Road #1 (Map 129, Lot 032) with Daniel Gozdoff of PO Box 1503, Lincoln, NH 03251-1503.
- **Amir Khasanov**, Resident and co-owner with Tamara Vartamova of 21 Franklin Street, PO Box 1521, Lincoln, NH 03251-1521 (Map 113, Lot 005) in Lincoln, NH
- **Jayne S. Ludwig**, resident, 12 Pleasant Street, Lincoln, NH 03251 (Map 113, Lot 092) and Selectman for the Town of Lincoln and wife of Steve Noseworthy.
- **Kevin McNamara** of 1595 Easton Valley Rd, Franconia NH 03580-5414 – real estate agent of RE/MAX in the Mountains, 264 Main Street, Suite 2, PO Box 175, Lincoln, NH 03251-0175, owner of 264 Main Street #2 (Map 117, Lot 120000-01-00015), and co-owner with Karen McNamara of 264 Main Street #3 (Map 117, Lot 120000-01-00003). and **AUTHORIZED AGENT FOR APPLICANT/OWNER Victor Del Regno, Trustee**, Trustee of Toreign III Realty, 6718 Fox Hollow Drive, West Palm Beach, FL 33412 which is the owner of two adjacent properties on Main Street: (1) Main Street (Lot 3) #LO (Map 112 Lot 002) and (2) Main Street (Lot 2) #LO (Map 114, Lot 003) the proposed location for Hampton Inn proposal.
- **Christopher T. Meier, Esq.**, Cooper Cargill Chant, P.A., Attorneys at Law, 2935 White Mountain Highway, North Conway, NH 03860, nonresident, **ATTORNEY FOR APPLICANT Dipak Patel**.
- **Stephen S. Nelson** – nonresident, General Manager for EconoLodge Inn & Suites, 381 US Route 3, Lincoln, NH 03251, lives at 47 River Run Road, Thornton, PO Box 223, Campton, NH 03223-0223.
- **Dipak Patel, (APPLICANT)** 104 Princeton Avenue, Waltham, MA 02451, Applicant and potential purchaser for two adjacent properties on Main Street: (1) Main Street (Lot 3) #LO (Map 112 Lot 002) and (2) Main Street (Lot 2) #LO (Map 114, Lot 003) owned by Victor Del Regno, Trustee, Trustee of Toreign III Realty, 6718 Fox Hollow Drive, West Palm Beach, FL 33412.
- **Vinkalbhair A. (Vinkal) Patel**, Nonresident, principal, general manager and customer contact for Best Western White Mountain Inn, 87 Wallace Hill Road, Franconia, NH 03580.
- **Zinalkumar (Zinal) A. Patel**, Nonresident, Franconia, NH 03580.
- **Lisa-Jane (Lisa) B. Philbrick**, Resident and co-owner with Kelly R. Philbrick of 11 Conn Drive, PO Box 1349, Lincoln, NH 03251-1349 (Map 117, Lot 032) and Lincoln Town Clerk.
- **Kelly Philbrick**, resident and co-owner with Lisa-Jane B. Philbrick of 11 Conn Drive, PO Box 1349, Lincoln, NH 03251-1349 (Map 117, Lot 032).
- **Burr H. D. Phillips**, PE, CPESC, Civil Solutions, LLC, PO Box 476, Bartlett, NH 03812, nonresident, Engineer and **Agent for Dipak J. Patel** from Waltham, MA for Hampton Inn proposal.

- **Nicholas Sceggell, P.E., Project Manager, DuBois & King, Inc. (Fluet Engineering Associates),** 831 Union Avenue, Laconia, NH 03246, Nonresident, **Agent for Dipak J. Patel** from Waltham, MA for Hampton Inn proposal.
  - **Delia M. Sullivan, resident (ABUTTER to lot in Lincoln Industrial Park)** of 13 Coolidge Street, PO Box 665, Lincoln, NH 03251, and co-trustee owner of property at 13 Coolidge Street (Tax Map 117, Lot 133001-00-0000) owned by:
    - Kevin J. Sullivan Trustee of the Kevin J. Sullivan 2016 Revocable Trust, PO Box 665, Lincoln, NH 03251; and
    - Delia M. Sullivan Trustee of the Delia M. Sullivan 2016 Revocable Trust, PO Box 665, Lincoln, NH 03251;and principal of Sully & Sons Holdings, LLC, PO Box 665, Lincoln, NH 03251-0665. that owns 21 Arthur Salem Way (Map 109, Lot 020). Also, member of the Zoning Board of Adjustment.
  - **Kevin Sullivan, resident (ABUTTER to lot in Lincoln Industrial Park)** of 13 Coolidge Street, PO Box 665, Lincoln, NH 03251, and co-trustee owner of property at 13 Coolidge Street (Tax Map 117, Lot 133001-00-0000) owned by:
    - Kevin J. Sullivan Trustee of the Kevin J. Sullivan 2016 Revocable Trust, PO Box 665, Lincoln, NH 03251; and
    - Delia M. Sullivan Trustee of the Delia M. Sullivan 2016 Revocable Trust, PO Box 665, Lincoln, NH 03251;and principal of Sully & Sons Holdings, LLC, PO Box 665, Lincoln, NH 03251-0665. that owns 21 Arthur Salem Way (Map 109, Lot 020).
- I. CALL TO ORDER by the Chairman of Planning Board (PB); announcement of excused absences, if any, and seating of alternates(s), if necessary.**
- II. CONSIDERATION of meeting minutes from:**
- March 27, 2019  
Chairman Jim Spanos, Vice Chair Joseph Chenard, member Steve Noseworthy & member Mark Ehrman, seated Alternate Paula Strickon and Alternate Deanna Chrystal.
- Motion to approve minutes as written: Chenard.**  
**Second: Noseworthy**  
**All in favor: 4-0**  
(Robinson abstained.)  
**Motion carries.**
- III. CONTINUING AND OTHER BUSINESS (Staff and Planning Board Members/ Alternates).**
- A. 6:00 PM. Site Plan Review – Dipak Patel d/b/a Hampton Inn –**  
**Applicant and Owner’s Agent Request to Continue to April 10, 2019 at 6:00 PM.**
1. **SPR 2018-05 M112 L002 & L003 – Del Regno+Patel**
  2. **Applicant:** Dipak Patel, 1567 White Mountain Highway, PO Box 3299, North Conway, NH 03860-3299.

3. **Applicant's Attorney:** Christopher T. Meier, Esq., Cooper Cargill Chant, P.A., Attorneys at Law, 2935 White Mountain Highway, North Conway, NH 03860
4. **Applicant's Engineer:** Nicholas J. Sceggell, P.E., DuBois & King, Inc., 831 Union Avenue, Laconia, NH 03246
5. **Applicant's Engineer:** Burr H. D. Phillips, PE, CPESC, Civil Solutions, LLC, PO Box 476, Bartlett, NH 03812
6. **Applicant's Surveyor:** Gardner Kellogg, Kellogg Surveying & Mapping, Inc., 254 Mann's Hill Road, Littleton, NH 03561
7. **Property Owner of Both Lots:** Victor R. Del Regno, Trustee of Toreign III Realty, 6718 Fox Hollow Drive, West Palm Beach, FL 33412
8. **Agent for Property Owner:** Kevin McNamara, Real Estate Agent for Re/Max in the Mountains, **264 Main Street, Suite 2 PO Box 175, Lincoln, NH 03251.**
9. **Properties:** (both lots are in the Village Center (VC) District):
  - a. Main Street (Lot 3) #LO (**Map 112, Lot 002**) and;
  - b. Main Street (Lot 2) #LO (**Map 112, Lot 003**)
10. **Proposed Project:** Applicant who has a purchase and sale agreement with the property owner of two adjacent lots is requesting **Site Plan Review** approval for a change of use to change the use of two adjacent properties in the same ownership (i.e., two existing vacant lots with three rental billboards) and to make site improvements to include a new 4-story 93-room Hampton Inn & Suites, paved parking for hotel & a separate 15,000 square foot lot, five new stormwater infiltration systems and connections to municipal water, municipal sewer & electric. The proposed project will also require a boundary line adjustment or subdivision.
11. **Prior Related Hearings:**
  - i. September 13, 2017 – Conceptual.
  - ii. October 18, 2017 – Request to ZBA for Height Requirement Variance Denied.
  - iii. February 14, 2018 – Conceptual.
  - iv. May 9, 2018 – Conceptual.
  - v. July 25, 2018 – Application for Site Plan Review. The Application was deemed “incomplete”. The hearing was continued from July 25, 2018, to August 20, 2018.
  - vi. August 20, 2018 -Application for Site Plan Review – Hearing was continued by mutual consent to September 12, 2018.
  - vii. September 12, 2018 – Application for Site Plan Review. The Application was deemed “incomplete”. The hearing was continued to October 10, 2018.



- viii. October 10, 2018 – Application for Site Plan Review was found to be complete. The hearing started and was continued to October 30, 2018.
- ix. October 30, 2018 – Application for Site Plan Review. The parties agreed to continue the hearing to Wednesday, November 28, 2018, to give the applicant a chance to address the concerns raised by the Town Engineer in a memorandum.
- x. November 28, 2018 – Application for Site Plan Review. The public hearing began with a presentation and questions from both the members of the Planning Board and members of the audience. By mutual consent of all parties the hearing was continued to January 9, 2019 at 6:00 PM.
- xi. January 9, 2019 – Application for Site Plan Review. The parties agreed to continue the hearing to Wednesday, January 23, 2019, to give the applicant a chance to address the concerns raised by the Town Engineer in a memorandum.

**(1) Applicant's List of Additional "What to Bring" Items for Meeting on January 9, 2019:**

**A. UPDATED RENDERING OF A TYPICAL BUILDING.**

Town Engineer Korber said Engineer Sceggell and Applicant Dipak Patel should bring in the options in terms of what the façade could look like (brick, metal, stucco, etc.), as well as the exterior paint colors approved by the Hampton Inn. Find out the limitations you are working with under the brand of the Hampton Inn.

**B. LIGHTING PLAN.** Lighting plan that shows the footprint of all the lights on the site, as well as height and dimension information.

**C. SIGNAGE.** Sign dimensions and details of all business signs.

**D. ADDRESS ALL CONCERNS OF TOWN ENGINEER.**

- xii. January 23, 2019 – Application for Site Plan Review. Applicant finished a presentation. Planner recommended that the Planning Board not approve the project. Planning Board discussed the recommendation. After a recess, the Planning Board agreed to the Applicant's request to continue the timeclock for approval and to continue the meeting until Wednesday, March 13, 2019 at 6:00 PM.
- xiii. March 13, 2019 - The Planning Board agreed to the Applicant's request to continue the timeclock for approval and to continue the meeting until Wednesday, April 10, 2019 at 6:00 PM.

**Presentation:****Applicant Dipak Patel's Attorney Christopher Meier presented a case before the Planning Board.**

Christopher Meier, Esq., introduced himself and spoke for the applicant. Attorney Meier said that he was “brought on” after the January 23, 2019 meeting. Attorney Meier introduced the applicant Dipak Patel and the rest of the applicant’s “team”:

1. Applicant’s Engineer Nick Sceggell, DuBois & King, Inc.
2. Applicant’s Engineer Burr H.D. Phillips, PE, CPESC, Civil Solutions, LLC
3. Owner’s Representative Kevin McNamara, Realtor, Re/Max Real Estate.

Attorney Meier then outlined changes made by the Applicant to the proposed Hampton Inn in response to comments received at the January 23, 2019, Planning Board Meeting.

**Architectural Design**

Attorney Meier expressed his opinion that the Planning Board’s “primary concern” was with the architectural design of the building. He showed the Planning Board the redesigned appearance of the Hampton Inn which he suggested more closely resembled “New England style architecture” required by the Town’s Site Plan Review Regulations.

**Roofline**

Attorney Meier also reviewed the new roofline and also suggested that the new design was in compliance with the Town’s height restrictions. (LUPO: Height Requirements: The maximum structure height shall be thirty-five feet (35’) from ground level to the primary eaves on the uphill side of the structure.) The engineers reduced the height of the earthen berm on the north end of the building from six feet (6’) to two feet (2’), by putting a parapet on the front and making the roofline appear as if it were peaked. “The height of the building has changed.” According to Attorney Meier, on the northwest side of the building the Applicant brought the structure height down to thirty-four feet (34’) from ground level to the primary eave on the uphill side of the structure.

**Fire Apparatus Truck Access to Building**

Attorney Meier pointed out the fire truck lane which now goes completely around the building on page C1 of the Plans, addressing the Town’s concerns about adequate access to all four (4) sides of the building.

**Parking**

Attorney Meier discussed parking. He said that the Plan for a ninety-three (93) room hotel includes ninety-five (95) parking spaces, which meets the Town’s minimum parking criteria. He also stated that there are an additional seven (7) or eight (8) parking spaces on the proposed “separate lot.” Attorney Meier explained that the applicant is still seeking to carve

that separate lot out, but if those parking spaces are required then they would continue to allow those parking spaces to be used by the hotel. Attorney Meier said that they understand they will have to come back to the Planning Board for a boundary line adjustment if and when that second lot is carved off. Attorney Meier reiterated that the applicant does not need those additional spaces to meet the Town's regulations, but this is an offer to provide additional spaces to the Board to provide parking spaces for hotel employees. Employee parking spaces will not be designated. There will be no designated parking at the hotel.

Attorney Meier said that during the evening, there would only be one (1) night watchman in addition to the guests. Counting the eight (8) parking lots on the second lot, there would be a total of one hundred three (103) parking spaces.

#### **Lot Line Adjustment or Boundary Line Adjustment**

Attorney Meier said he understands that his client will need to create an easement for the additional parking on the separate lot and that will happen when they come before the Planning Board to do a Boundary Line Adjustment to carve the second lot off. Attorney Meier said his client is aware that the minimum lot size is fifteen thousand square feet (15,000 sf). If the lot is smaller than fifteen thousand square feet (15,000 sf) it is not a saleable lot. Attorney Meier said the parking easement will be a condition for selling the second lot; and that is "out of the jurisdiction of the Planning Board".

#### **Adequate Water Fire Flow for Fire Suppression Provided Onsite or from Elsewhere:**

Attorney Meier addressed the fire suppression issue and agreed that the applicant needs to come up with a fire suppression system that meets the State's Fire Code and satisfies the Town's Fire Chief. He suggested that there are potentially three (3) different options. Attorney Meier asked the Planning Board to make providing adequate water fire flow for fire suppression on site or from elsewhere a condition of approval so that the applicant's engineers could work with the Town's Fire Chief and the Town's Engineer to design the best option for his client and for the Town.

#### **Lighting:**

Attorney Meier said that the lighting "spill-over" has been addressed, and there is no longer any lighting spill-over. His client will provide "full shields" on the lights to prevent any "spill-over" onto adjacent lots.

#### **NH DOT Driveway Permit Approval:**

Attorney Meier said that the NH Department of Transportation (NH DOT) Driveway Permit should also be a condition of approval. His client does not have NH DOT approval yet, but they have narrowed it down to seven (7) items that are outstanding. Applicant's Engineer said the Town and NH DOT prefer minimum access off Main Street/NH Route 112.

**Responses:****Address the Fire Suppression Issue Prior to Approval:**

Fire Chief Ron Beard said that it would be prudent to figure out the fire suppression issue now. Attorney Meier said that this issue could be brought back to the Planning Board, it does not have to be delegated to the Fire Chief.

**Address the Fire Suppression Issue and Driveway Permit Issue Prior to Approval:**

The Town's Engineer, Ray Korber, said that he would require NH DOT Driveway Permit approval first. He also said that fire suppression is a critical issue and should be resolved before the project is approved.

**Planning Board Questions:**

Members of the Planning Board asked questions about the number of parking spaces, the location of the parking spaces, whether the applicant was double counting the parking spaces on the separate lot, both for the hotel purposes and for the eventual purpose of the second lot. Questions were asked about the siding – it will be vinyl siding with the appearance of clapboards with some stone along the bottom.

**Proposal to Use Water for Snow Making Line for Fire Suppression:**

The Planning Board asked Fire Chief Beard if Loon Mountain Recreation Area's snow making line was okay to use to meet the applicant's fire suppression water requirements. Fire Chief Beard said that in his professional opinion it was not.

Applicant's Attorney Meier said that his client was working with Rick Kelley who works for Boyne up at Loon to give the Fire Chief control of turning the pump system for the snowmaking line on by using a cell phone. [Rick Kelley is President & General Manager for Boyne Resorts. Until August 31, 2017, Rick Kelley, was the president and general manager of Loon Mountain, N.H, when Kelley was appointed as senior vice president of mountain operations for the company, Boyne Resorts.]

Fire Chief Beard said there are a lot of issues to work out before that snow making line could be considered a credible water source for fire suppression. Chief Beard also stated that if the Applicant and his engineers were to get their Site Plan Review approval from the Planning Board, the Applicant would not be allowed to get his Land Use Permit from the Town or his Building Permit from the State Fire Marshall's Office or to put any building materials on that site until there is either an adequate water supply for fire suppression onsite or an adequate water supply from some other means. Nothing will happen on the site until approval for water for fire suppression is granted by the Fire Chief.

Fire Chief Beard said the other issue he is concerned about is accessibility around the entire building for the Fire Department's largest fire truck. The Applicant's Engineer Nick Sceggell



said he has “worked that out” using the specifications for a large transit bus (“Bus 45”), but he did not use the specifications for the Town of Lincoln’s Tower/Ladder Fire Truck (which has a fourteen-foot (14’) tail swing and a wider turning radius than a commercial transit bus). Fire Chief Beard said the Town Engineer Korber will have to review the plans to verify adequate accessibility around the entire building for fire-fighting accessibility **before** the Fire Chief will sign off on it for either a Town Land Use Authorization Permit or a State Building Permit.

Planner Bont gave copies of two (2) emails from Fire Chief Beard to Attorney Christopher Meier that were in the Planning Board members’ packets. One email indicated that the snow making water line will not satisfy their water for fire suppression. The water, pumps and controls are privately owned with no backup power supply. A second email indicated that the Fire Chief already spoke with the fire marshal’s office about the snowmaking water line and it does not qualify as a primary water supply for fire suppression. The first and only time the Fire Department trained on it, it took almost an hour to get water and probably another half an hour to get 844 gallons per minute flow. It took two Loon employees to make it happen. The Fire Chief asked Loon to do more trainings on the snow making line but that has not happened yet. One of the Fire Department officers was told by a Loon employee that during snow making season this water line would be unavailable. To sum it up the Hampton Inn needs their own tank and fire pump.

**Applicant’s Engineer Nick Sceggell and Applicant’s Attorney Christopher Meier stated that Applicant’s Engineer Nick Sceggell will redo the turning radiuses for the traffic on the site using the specifications for the largest Fire Truck and give the plans to Fire Chief Ron Beard and Town Engineer Ray Korber so they can verify that the Town fire-fighting apparatus will be able to access the building all around the entire building as alleged.**

**Town Engineer Recommendation:**

Chair Spanos asked Town Engineer Korber what the current status of the review of the plans was. Town Engineer Ray Korber said the Town and he had not received the updated plans until Friday April 5, 2019, after 4:00 PM. He did not have a chance to even look at them prior to tonight’s meeting.

Town Engineer Korber checked his file and said that the last communication he had with the Applicant’s Engineer Sceggell was on January 17, 2019, when his firm issued Technical Memorandum #3. Applicant’s Engineer Sceggell responded on January 23, 2019. At that time no copy was emailed to Town Engineer Korber by Applicant’s Engineer Sceggell. The Town had to forward the response to him. Applicant’s Engineer Sceggell said he sent the plans to the Town on March 4, 2019.

*(Note: The email on March 4, 2019 was addressed to NH DOT. The Town Planner was copied, but not the Town Engineer. The March plans did not include the drive around the building, but did include vehicle tracking plans.)*

*(Note: The plans that were attached to the email on April 5, 2019, included a Drainage Report Package. The Town staff, including the Town Engineer did not have time to compare the plans from March with the plans from April.)*

#### **Town Engineer's Recommendation:**

Town Engineer Korber's professional recommendation was that **prior** to making a decision, the Planning Board should:

1. Give the Town Engineer and Town Staff an opportunity to look at the revised plans and review them.
2. Wait until the Applicant got NH DOT approval for the curb cut/traffic plans.
3. Get a detailed Fire Suppression Plan prepared by a Fire Protection Engineer and reviewed by a third-party reviewer Fire Protection Engineer. It is critical that fire suppression be resolved **before** the Planning Board grants approval. Furthermore, it is not fair to delegate approval of the plan for fire suppression to the Fire Chief. That is a decision that needs to be made by the Planning Board in the context of Site Plan Review.
4. Using the specifications for the actual Town Tower/Ladder Fire Truck, review plans to see that the fire truck can get around the building.

#### **Town Planner's Recommendation:**

Chair Spanos asked Town Planner Bont about what her recommendation was.

##### **Height:**

Planner Bont said the Planning Board had not made a firm decision on the height. The ZBA had denied the application for a variance to build a four-story hotel that was greater than the allowable maximum height of thirty-five feet to the primary eave on the uphill side of the building. The Planning Board had taken a "straw poll" about the height during the **conceptual** stage of the process which is **not binding** on September 28, 2018. At that time the majority of Planning Board members had okayed the use of an earthen berm on one end of the building to get around the maximum height requirement with one abstention (Steve Noseworthy). However, at the last meeting, various members of the Planning Board expressed concern about the height of the building with no final Planning Board decision about the height, in her opinion.

##### **On Site Water for Fire Suppression:**

Planner Bont said the Town recently learned that the Town does not have adequate water "Fire Flow" to ensure fire suppression using the municipal water supply throughout the entire Town. In the past, the Town relied on what it believed was adequate fire flow for fire suppression. Then, the Town hired Hoyle Tanner & Associates to do a full analysis with updated data and to revise the water model to verify the lack of adequate fire flow for fire suppression. Although the Town staff with the assistance of professional engineers now is

trying to figure out what to recommend to the Town to address the problem, the inadequate fire flow water situation is not resolved yet; currently there is not adequate fire flow from the municipal water system for fire suppression. For this reason, Planner agreed with the recommendation of the Town Engineer Korber that the Planning Board needs a detailed Fire Suppression Plan prepared by a Fire Protection Engineer and reviewed by a third-party reviewer who is a Fire Protection Engineer for the Town.

Planner Bont asked Applicant's Engineer Sceggell whether or not he could contain the two hundred fifty-five thousand (255,000) gallons of water on site under the proposed building as required NFPA 1 without changing the location of the building or anything else as proposed on the site. Engineer Nick Sceggell said he could.

### **NH DOT Approval**

Planner Bont said she also thought that the Planning Board needed to see the NH DOT approval for the location of the curb cut and traffic pattern in case the NH DOT proposes changes that would necessitating relocating the building or other parts of the Site Plan submitted to the Planning Board. In response to questions, Applicant's Engineer Sceggell said that at first the NH DOT had 20 requests for additional information. The second NH DOT requests for additional information had 25 questions. The most recent NH DOT request has 7 questions that need to be addressed. Applicant's Engineer Sceggell said they did not expect any changes in the location of the building or anything else on the lot.

### **Town Manager's Recommendation**

Town Manager Butch Burbank said that the inadequate water for fire suppression was the biggest problem that should be addressed **prior** to Planning Board approval.

### **Planning Board Comments:**

Planning Board member Mark Ehrman provided a summary of his understanding of Attorney Meier's comments and his responses.

### **Design and Architecture:**

Ehrman said that contrary to what Attorney Meier said in his opening remarks, the overall aesthetics and design of the building were not the overriding concerns of the members of the Planning Board.

Ehrman said he does not like the redesign. He characterized the redesign as "Bowdlerized architecture". He does not agree that the design qualifies as "New England style architecture." In his opinion, the building design does not comply with the Town's Site Plan Review Regulations.

*[Note: “Bowdlerized” is named after English Physician Thomas Bowdler (1754-1825) who published a censored version of Shakespeare (The Family Shakespeare) in 1818 expurgating “those words and expressions [...] which cannot with propriety be read aloud in a family.”]*

### **Height and Volume of the Building:**

Ehrman does not agree with the proposed height of the building, or the volume of the building. Neither of these issues were addressed to Mr. Ehrman’s satisfaction. He thinks that the number of rooms is too high, and the building is too large for this site. There is not enough room for a four-story hotel building. The proposed height has already been denied by the ZBA. The building is excessively large for the lot both aesthetically and practically. There is not enough room for ninety-three (93) rooms on a combined lot that is only 1.86 Acres or eighty thousand eight hundred thirty-two square feet (80,832 sf).

*[(Note: 2.2 Acres X 43,560 sf = 95,832 sf) - 15,000 sf = 80,832 sf)]*

### **Fire Lane:**

Ehrman has looked at the plans and he cannot see how the issues raised about the fire lane have been adequately addressed. He is not an engineer but he does have fifty-five (55) years of development experience and he does not think that the Fire Department could drive its largest fire truck around the building as shown on the plan. Especially in the winter time, he cannot see how a fire truck could get around this building. In his view, adequate access for firefighting apparatus is still an unresolved problem for this project.

### **Parking:**

Although Ehrman agreed that the number and size of the proposed parking spaces are in literal compliance with the ordinance, as designed, the number of parking spaces proposed in this project is not suitable for the intended use.

### **Easement for Parking Off Site on an Adjacent Lot:**

Ehrman suggested that the easement proposal for the secondary lot lacks clarity. He thinks that the applicant will end up double counting spaces when it comes time to develop the second lot. In order to understand the easement, the Planning Board and the Applicant have to have a clear understanding of the intent of the easement.

### **Did Not Address Inadequate Water Fire Flow for Fire Suppression:**

Ehrman was not satisfied with the applicant’s failing to address the water issue and putting it off.

### **Lighting Plan:**

Ehrman felt that the lighting plan as presented was acceptable.



**NH DOT Driveway Permit (Curb Cut) Needed**

Finally, Mr. Ehrman suggested that the driveway curb cut needs to be satisfied before the Planning Board should grant any kind of approval.

**Summary:**

Overall, Mr. Ehrman feels as though the applicant has engaged in a constant effort to continue to impose too much density on too little a lot.

**NH DOT Driveway Permit – Access off Main Street/NH Route 112:**

Vice Chair Chenard commented on the limited access of Main Street/NH Route 112. He does not think the two curb cuts off Main Street/NH Route 112 are adequate because the Bank of New Hampshire also uses one of the curb cuts for its customers.

Applicant's Engineer Nick Sceggell said there were two (2) curb cuts. He was waiting for NH Department Transportation (DOT) to grant a driveway permit. He does not anticipate having to make any changes to the site based on NH DOT input. In response to a request from Lisa-Jane Philbrick in the audience, he said he does not have a promise from NH DOT in writing to that effect.

*The Planning Board voted to open the meeting to the public.*

**Kevin McNamara:**

Kevin McNamara, representing the property owner Victor DelRegno d/b/a Authorized Agent for Applicant/Owner Victor Del Regno, Trustee, Trustee of Toreign III Realty, said he had spoken to Rick Kelley at Boyne and felt a conditional Site Plan Review approval for the project was in order because he had a good feeling that there will be a solution for the water problem. That solution is to use the Loon Snowmaking line [from the Govoni Pond located on property owned by Carol C. Govoni and Peter F. Govoni on 40 Towle Road (Map 110, Lot 007)]. McNamara said he thinks the inadequate fire flow for fire suppression water problem is the Town's fault and therefore the Town's problem, not a problem for the developers to address, but rather a problem for the Town to address. The Town's water problem should not interfere with the developers wanting to build hotels.

**Lisa-Jane Philbrick:**

Lisa-Jane Philbrick said that she did not understand why the Hampton Inn was not trying harder to make the Town Board comfortable with the project. In the presentation that the applicant only had 95 parking spaces for 93 hotel rooms on the lot and not enough parking spaces for employees. The Applicant is proposing using seven (7) parking spaces on the adjacent lot for the hotel, however, Lisa-Jane Philbrick wanted to know if the agreement between the lot with the hotel (dominant estate) and the little lot subject to the easement (subservient estate) was in writing. The answer was "no". Lisa-Jane Philbrick also asked if the easement on the small

fifteen thousand square foot (15,000 sf) lot to provide hotel parking for the hotel on the bigger lot would make that smaller lot “unsaleable” or “unusable”.

**Delia Sullivan:**

Delia Sullivan asked whether the on-site water storage would cut into the area required for the 93 parking spaces. Applicant’s Engineer Sceggell said “no”.

Delia Sullivan also asked about the siding and whether the Applicant had provided the Planning Board with samples of the proposed color of the building. Dipak Patel showed those attending the meeting a piece of vinyl siding that he brought to the meeting. The vinyl sample appeared to be cream colored.

**Lisa-Jane Philbrick:**

Lisa-Jane Philbrick asked why the snow removal had not been addressed on the site plan. The Applicant’s answer was that the snow would be removed from the site.

**Jayne Ludwig:**

Jayne Ludwig said she is a resident and has lived in Lincoln for forty-four (44) years. One of the characteristics of Lincoln that attracts visitors is the incredible mountain vista on both sides and in front of the driver as they approach the Town of Lincoln along Main Street/NH Route 112. She thinks the hotel building is much too large and much too tall for the lot. The hotel will obstruct the view of the mountains on the right-hand side as people drive northeast along Main Street/NH Route 112. Ludwig asked the Applicant if he would consider removing one (1) floor to make the height of the hotel meet the maximum height requirement? Dipak Patel refused to accept Ludwig’s suggestion to remove an entire floor from the hotel.

Ludwig went on to say that the four-story high Hampton Inn as proposed will devalue the property of everyone’s property in Town. The building is located too close to Main Street/NH Route 112 and crowds the street. More importantly, it obstructs the mountain views. Even though there are other four-story hotels in town, those other hotels are set back away from the Main Street/NH Route 112. The proposed Hampton Inn is going to be sited in such a prominent place on the lot and on Main Street the inn will make the Town of Lincoln look like every other unattractive town elsewhere. The Town itself will look less appealing and tourists who are attracted and inspired to come to Lincoln because of the incredible natural views will no longer come here. Tourism will suffer and tourism is the life blood of the Town.

**Applicant’s Response:**

Applicant Dipak Patel complained that the Town’s requirements seem to change every time he comes before the Planning Board. Planner Bont said that although she had pointed Dipak Patel and his engineers to the Site Plan Review Regulations on multiple occasions, until just before this last meeting he and his engineers did not appear to have actually read or heeded them. Lisa-Jane Philbrick responded that Applicant Dipak Patel has not been providing proper plans

according to the Site Plan Review Regulations and that is why he has been asked to come back to complete the review process.

### **Planning Board Discussion:**

Alternate Deanne Chrystal said that the proposed Hampton Inn looks similar to the Nordic Inn (located at 227 Main Street (Map 117, Lot 117) and therefore should be approved. Members of the audience pointed out that the Nordic Inn was set back further from Main Street/NH Route 112 than the Applicant Dipak Patel is proposing for the Hampton Inn and therefore, is not as intrusive on the landscape as the Hampton Inn will be.

There was some additional discussion about whether or not the new plan complied with the Town's requirements for New England style architecture, whether or not the Planning Board of Town Staff has had a sufficient amount of time to review the new plans (which they just received on Friday and have not reviewed), whether or not the Planning Board was comfortable going forward and making a decision tonight without that review, as well as discussions on the height issue, the number of parking spaces, the driveway permit issue as well as no plan for onsite water storage to address the inadequate fire flow for fire suppression issue.

**Motion to close the public hearing was voted in favor unanimously (5-0).**

### **Legal Advice to the Planning Board:**

Attorney Malia said "Conditional Approval" of the Application for Site Plan Review means the Applicant can come back to the Planning Board for a public hearing if any changes need to be made as a result of attempting to satisfy the conditions.

Attorney Malia explained that there are two general categories of conditions:

- **Conditions precedent** are conditions that must be fulfilled before the planning board may give final approval to an application, such as receiving state permits, obtaining bonds for construction, and making revisions to the plans.
- **Conditions subsequent** are conditions that appear on the final plat and deal with restrictions on the use of property or safeguards that must be observed during development of the parcel or once the project is in use. Such issues might include the location of a road, preservation of vegetation and stone walls, or hours of operation and details of security protection for a commercial use.

In imposing conditions on the approval of an application, the records of the Planning Board should state the reasons for the conditions and the specific actions that are required. This will simplify the job of verifying that the conditions have been met. In conjunction with the local enforcement authorities, the Planning Board should establish a monitoring process to ensure that conditions subsequent are followed, both during development and through the ongoing life of the project. In addition, such conditions should be noted on the written decision issued to the applicant and on the plat, or contained in a separate recording at the Registry of Deeds so that the conditions are a matter of record for future owners of the property.

According to RSA 676:4, I(i), conditional approvals that are considered minor plan changes, administrative, or relate to the issuance of other approvals or permits, become final without further public hearing once satisfactory compliance with the conditions has been confirmed. This may occur either through certification to the Planning Board by its designee or based on evidence submitted by the applicant to the Planning Board. All other conditions precedent require a hearing prior to the plat's final approval and must be noticed as provided in RSA 676:4, I(d). **(Planning Board Handbook 2018, page V-15 & 16.)**

### **Planning Board Discussion/Conditions of Approval:**

#### **Height:**

Robinson stated that in his opinion, the Planning Board had implicitly approved the retaining wall concept in a conceptual hearing several meetings ago. Even though what happens in a conceptual hearing is nonbinding, he is encouraged because the Applicant reduced the height of the retaining wall that was supporting the earthen berm at the northeastern end of the building from six to eight feet (6'-8') tall to two feet (2') high. Robinson said the height to the primary eave on the uphill side of the building now meets the criteria in the zoning ordinance (Land Use Plan Ordinance).

#### **New England-Like Building Design and Flat Roof:**

Robinson said the prior design for the building made him cringe. The new redesign is more desirable in that there will be the appearance of a peaked roof instead of a flat roof. On the down side, more of the mountain views are blocked. Robinson said he feels he has to weigh the benefit of the New England-like architectural design against the negative impact caused by allowing the Applicant to make the building fifteen feet (15') higher, blocking more of the mountain views on Main Street. Robinson stated that he likes the new design. In his opinion, the redesign looks similar to the Nordic Inn located further northeast on Main Street/NH Route 112.

#### **Parking Spaces, Snow Removal, Parking Spaces on Second Lot:**

Robinson said that although the number of parking spaces proposed literally meets the Town's minimum parking space requirements, the total number of those available spots will be reduced when some of them are covered with piles of snow. The Applicant has said he will remove the snow from the lot. The Applicant has proposed the potential for an additional seven (8) spaces on the separate lot. When it comes time to approve a Lot Line Adjustment for the 2<sup>nd</sup> lot, Mr. Robinson suggested that the Planning Board should consider how many parking spaces are actually needed and when those spaces are needed. Robinson said he ran a hotel himself for twenty-nine (29) years and he agrees that during the evening when the guests are in the hotel, there are very few employees there. The majority of employees are present during the day when most of the guests are out and about.

#### **Lighting:**

Mr. Robinson indicated that he is satisfied with the lighting proposal.



**Adequate Water Storage Onsite for Fire Suppression – a Condition of Approval:**

Mr. Robinson said that he agreed with the Applicant's proposal that the fire suppression be a Condition of Approval which would be reviewed by the Planning Board. He did not think that the decision about whether this condition had been met should be shouldered by the Fire Chief and the Planner alone as part of the Land Use Permitting process. Mr. Robinson stated that the Planning Board's approval of the solution for providing adequate fire flow for fire suppression would have to occur **before any construction materials are brought to the site and before any above ground construction commences.**

**NH DOT Driveway Permit – a Condition of Approval:**

Mr. Robinson said that he was also comfortable with the NH DOT Driveway Permit being a condition of approval. Mr. Robinson said that if NH DOT tells the Applicant that he has to move the building, then the Planning Board's approval is voided. The current Site Plan meets the zoning criteria for setbacks and density (i.e., Maximum Lot Coverage of 70% in the General Use District).

**Volume of the Building:**

Mr. Robinson stated that although some members of the Planning Board and public might have "volumetric concerns," the proposal meets the Town's rules and regulations with regards to volume.

**Adequate Fire Truck Access, to All Four (4) Sides of the Building Including Adequate Turning Radiuses:**

Fire Chief Ron Beard and Town Engineer Ray Korber suggest that in the plan on page C1 showing the commercial transit bus turning radius ("Bus 45") seems too tight, Robinson said that the Town's Engineer Raymond Korber of KVPpartners, LLC and Fire Chief Ron Beard should have an opportunity to review fire truck access around the building (turning radius) to make sure that the new corner (turning radius) in the back left hand corner as shown on the most recent revised plan (submitted on Friday and not reviewed) to make sure the turning radius will work for the Town's tower fire truck. The Applicant did not prepare a turning radius plan showing the fire truck which has a fourteen-foot tail swing and a less tight turning radius than a commercial transit bus. The Applicant's engineers shall prepare a plan using the specifications for the Town Fire Truck and give it to the Town Engineer and the Town Fire Chief as soon as possible.

**Lot Line Adjustment Shall Be Approved Prior to Construction:**

Mr. Robinson also said that the lot line adjustment should be completed and approved prior to the commencement of construction, and this should also be a condition of approval.

**Deadlines - Time to Come into Compliance:**

There was some discussion as to how much time the applicants should be given to satisfy these conditions. Attorney Malia said, if the Planning Board grants a conditional approval with conditions precedent, the Planning Board sets a deadline. The condition has to be met by a date certain. That way the Planning Board can set its own clock. Attorney Malia asked the Applicant “How long do you need to meet the requirements?” After some discussion, the Applicant, his engineers, his attorney and the Planning Board agreed on one (1) year.

The Applicant, his Attorneys, his Engineers and the Planning Board agreed that the Planning Board would give the applicant one (1) year from the date of the April 10, 2019 Planning Board hearing to submit the relevant information to the Town Planner, Carole Bont, and then she would schedule a Planning Board Public Hearing, and the Planning Board would determine whether or not the applicant has met the conditions.

The Planning Board’s public hearing does not have to take place within one (1) year. Rather, the information needs to be submitted to the Town within one (1) year, but the public hearing could potentially take place later than one (1) year from today’s date.

However, if the applicant completes the information needed to satisfy the conditions earlier, then the applicant can provide the information to the Town as soon as possible and ask for the public hearing to be scheduled.

**Implementation of the “First Come, First Served” Policy for Town’s Wastewater Treatment Plant:**

There was also some discussion about the Selectmen’s recent “First Come First Served” resolution regarding the Town’s Wastewater Treatment Plant. The Planning Board determined that this applicant, Dipak Patel’s approval tonight would qualify as “First Come.” This means that even if another developer gets approval within the year that is being given to this applicant to satisfy these conditions of approval, the next developer would not move ahead of this applicant.

**Motion to Approve Site Plan Review Application Subject to the Conditions Listed Above.**

**Mr. Robinson’s comments were made into a formal motion, which was seconded and approved by the Planning Board with 3 in favor (Robinson, Chenard and Spanos) and 2 opposed (Ehrman and Noseworthy). As a result, the Applicant received a Conditional Site Plan Approval.**

**Compliance Hearing**

Responding to a New Hampshire Supreme Court ruling in *Sklar v. Town of Merrimack*, 125 NH 321 (1984), the state legislature addressed the issues of how and when a conditional approval becomes final. Under RSA 676:4, I(i), a public hearing is not required when compliance with the conditions is an administrative act or does not involve discretionary judgment by the board. Such conditions precedent might include:

- Minor plan changes such as modifying the location of a structure or a lot line to accommodate a tree or other natural feature;
- Administrative conditions such as submission of financial security to ensure compliance with the municipality's road specifications or other requirements for improvements; or
- Conditions that require the applicant to receive permits or approvals from other boards or state or federal agencies, i.e., wetland permit, subsurface disposal system permit, or approval to tie into municipal water or sewer systems.

A public hearing must be held to assure compliance with conditions that require judgment by the planning board. For example, revisions to a drainage plan must be reviewed to determine if they adequately meet concerns expressed either by the board or an abutter. Such a condition requires a public hearing with full notice to abutters and the public before finalizing the approval and signing the plat (RSA 676:4, I(d)).

Additional notice is not required for an adjourned hearing if the date, time, and place of the continuation were announced at the prior hearing. The board should listen to the public's comments and decide, by vote, whether the conditions have been met. The compliance hearing is concerned only with the issue of whether any discretionary conditions attached to the approval have been met and should not provide an opportunity to reopen general discussion of the entire proposal. **(Planning Board Handbook 2018, page V-16.)**

### III. NEW BUSINESS

#### A. 6:00 PM. Planning Board Recommendation on Proposed Purchase of Town Owned Land.

Review Found Research re: History of Lincoln Industrial Park

The Board of Selectmen received an offer to purchase a parcel known as "Lot 4" in the Lincoln Industrial Park (Map 109, Lot 019).

Per NH RSA 41:14-a Acquisition or Sale of Land, Buildings, or Both":

"The Selectmen shall have the authority to acquire or sell land, buildings or both; provided, however, they shall first submit any such proposed acquisition or sale to the planning board and to the conservation commission for review and recommendation by those bodies, where a board or commission or both, exist."

"After receiving the recommendation from the Planning Board and prior to voting on the proposed sale, the Board of Selectmen shall hold 2 public hearings at least 10 but not more than 14 days apart."

The Board of Selectmen received an offer to purchase a parcel known as "Lot 4" in the Lincoln Industrial Park (Map 109, Lot 019) from Kurt O'Connell, a local builder. After a nonpublic session with Michael Donahue, Sr., and Michael Donahue, Jr., the Planning Board voted NOT to recommend the sale of the property at the offered price.

Based on the Planning Board's recommendation to the Board of Selectmen (BOS) not to sell the property in the Lincoln Industrial Park at the last Planning Board meeting on March 13, 2019, and in response, the Board of Selectmen (BOS) asked the Planning

Board to develop and convey to the BOS a list of criteria for the BOS to use in determining whether or not to sell property in the Lincoln Industrial Park.

After receiving the recommendation “Not to Sell” from the Planning Board and prior to voting on the proposed sale, the Board of Selectmen held 2 public hearings. The first Board of Selectmen public hearing was held on Monday, March 25, 2019; the second public hearing was held on Monday, April 8, 2019.

### **Discussion:**

#### **Find History to Determine Intent:**

BOS Representative to the Planning Board Robinson said that because the discussion about the creation of the Lincoln Industrial Park began with the Planning Board in the early nineties (1990's), he believes the Planning Board should set the guidelines for sales of lots within the Lincoln Industrial Park going forward.

Member Ehrman said the Planning Board (town staff) must either find the original documents with these rules or guidelines, or rewrite them. The Board of Selectman has the legal right to sell the land. Ehrman said he would like to propose that when the Selectmen receive or make an offer, or negotiate a deal, that they make the offer public knowledge for other citizens to see.

#### **Planning Board Only Makes a Recommendation to the BOS:**

Alternate Paul Beaudin said that as he looked at RSA 41:14, he believes that Planning Board only has the right to make a recommendation. After that, the proposed sale along with the Planning Board's recommendation goes to the Board of Selectmen, who, after two public hearings, decides if the Board is going to sell the property. Beaudin said that according to RSA, 41:14, the Planning Board has no authority over the selling price of the lot.

Attorney Malia said that the authority to sell town-owned land does rest with the Board of Selectmen, but prior to the sale, the Board of Selectmen must seek a recommendation from both the Planning Board and the Conservation Commission, and then hold two public hearings.

#### **BOS Looking for Guidance from Planning Board:**

BOS Representative to the Planning Board Robinson said this is more about the philosophy than criteria. As an example, Chairman Hewitt of the Board of Selectmen stressed that the Selectmen wanted to create jobs at the industrial park. (This was in 2005.) On his property, Mike Donahue, Sr. said he wanted to attract business owners from the construction trades (plumbers, electricians, carpets installers, etc.), and would also make room for office professionals. Since then, there has been discussion that the employment needs to take place within the confines of a building on the lot within the Industrial Park, which would knock out people like electricians who do not actually work in their offices. Robinson said, the main question is who has the authority to make decisions about town owned land.



**Source of Covenants and Restrictions:**

Attorney Malia read a letter from Delia Sullivan, that included a quitclaim deed from the Town of Lincoln to Sully & Sons LLC in Lincoln from 2012. That deed has eight (8) covenants and restrictions in it. The covenants and restrictions relate to the types of activity that can occur on that lot. In addition, Delia Sullivan alleged that the lot owners were also required to add three (3) or more jobs to the community if they purchased the lot. Supporting written documentation for the “3 or more added jobs” requirement is not clear. That requirement does show up in the advertisements for the sale of the land to the Sullivans.

**Vice Chair Chenard made a motion to open public comment. Representative Robinson seconded the motion. The Board voted all in favor, and the motion carried. Public comment is open.**

Delia Sullivan, in reference to the letter she sent to the Planning Board about the covenant in her deed, said that the intent of the Lincoln Industrial Park is in the covenants listed in her deed that she presented. The Planning Board has shot down offers for that land for years. She read item b:

- b. Any commercial or light industrial use of this lot or the structures thereupon must be of the type expected to require regular on-site staff supervision and employment. No use primarily intended for storage or other unattended purposes will be allowed;

Delia Sullivan emphasized that the site requires on-site staff supervision and employment. She currently has made an offer to purchase Lot 4. Delia Sullivan said the only reason she did not put in an offer before was because she was told by BOS Chair OJ Robinson that she could not purchase the land as an investment, and at that time she could not afford to hire another employee. She said, “We were told we couldn’t bid on the lot, but then someone is up to buy the lot who does not have employees.”

Alternate Paul Beaudin asked where the covenants came from. Chairman Spanos referenced the minutes from July 13, 2005, around the time when these covenants were drawn indicating that the Board reviewed the revised draft of the Business Park Covenants and decided to have the Town attorney review the draft.

Town Manager Butch Burbank said he found an August 19, 2005 letter Attorney Malia wrote about the covenants, which basically said that there are number of covenants and restrictions that no longer apply to the land owned by the Town of Lincoln, but the Board of Selectmen could choose to apply some of them to the sale of these lots if they chose. There were eight (8) covenants that the Selectmen decided to apply. The question was raised about whether the current buyer of Lot 4 needs to abide by these same covenants as part of his Site Plan Review, however, the answer was undetermined.

***Mark Ehrman was excused. Paul Beaudin is seated.***

Delia Sullivan said that it sounded like the Board of Selectmen is in favor of a zoning change in the Small Business District that is comprised of the Lincoln Industrial Park. Delia Sullivan said this seems to be what Kurt O'Connell, the pending buyer, wants to do, so O'Connell can build workforce housing. Attorney Malia said that the covenants already forbid any buyer to build a residential structure.

The conveyed lot can only be used for light industrial and commercial purposes which conform in all ways to the applicable state and local ordinances provided that any particular use must also be approved by the Town of Lincoln which approval shall not be unreasonably withheld.

Representative Robinson said that O'Connell's intent is to build the headquarters for O'Connell Builders, and rent out space to other builders.

Delia Sullivan referenced the March 27, 2017 minutes, when the Board motioned to take the other lots off the market, except for Lot 2 and Lot 4, which are the only lots actively for sale.

Representative Robinson asked Town Attorney Malia, what would the Board of Selectmen do if they got a second offer halfway through the approval process, for example in the middle of the first public hearing. Attorney Malia said the Board of Selectmen cannot make a decision on one offer until seven (7) days after the second public hearing. Only then can the Board of Selectmen address its next offer. (However, other potential buyers can make their intentions known at these public hearings.)

Representative Robinson said that in the Board of Selectmen's Meeting Minutes from March 4, 2019, the Town granted Kurt O'Connell a "Right of First Notification" with Lot 2.

Representative Robinson clarified that this "Right of First Notification" only comes into effect if O'Connell purchases Lot 4. At this point, no lot has been sold and any offer with business documentation will be considered.

Alternate Paul Beaudin suggested selling these lots using a sealed bid process to create less animosity.

Delia Sullivan said if the Board of Selectmen changed their criteria to be more open, she should have the right to buy Lot 4.

**A. 6:00 PM. Membership on both ZBA and Planning Board is Problematic.**

Board of Selectmen asked Planning Board to consider the issue that Paul Beaudin is presently sitting on two (2) boards: as a Planning Board Alternate and a Zoning Board member. Both Boards must be made fully aware that although both boards are now fully elected, if the Boards put a member on both boards that situation creates a "potential" major conflict of interest in the event one of the Boards must "jury" for the other. The BOS understands this can result in costly legal litigation and although it is "legal" it is not recommended. This has been made an agenda item as soon as possible so that both Boards are aware.

Also, the BOS want the Administrative Assistant to post the vacancies after we establish who is sitting where and what actual seats need to be filled before making a decision about who will fill those seats.

*The Planning Board did not address this issue this evening.*

## VI. ADJOURNMENT

**Member Noseworthy made a motion to adjourn. Vice Chair Chenard seconded the motion and the Board voted all in favor. The motion carries, and the meeting adjourned at 9:10 PM.**

*(Note: The video recording of the Planning Board meeting did not work so the first 2/3rds of the minutes (top of Page 6 to the top of Page 19) were transcribed from the notes of various people who attended the meeting, including Planner Carole Bont and Town Attorney Peter Malia, as well as interviews with people who spoke at the meeting and/or were present at the meeting (Lisa-Jane Philbrick, Jayne Ludwig, Fire Chief Ron Beard). The last 1/3 of the minutes pertaining to the Lincoln Industrial Park starting at the bottom of Page 19 to the end on Page 23 were created using an audio recorder.)*

Respectfully submitted,

*Ellyn Franklin*  
Recorder

April 30 2019

Date Approved:

  
James Spanos, Chairman

