

**LINCOLN PLANNING BOARD  
REGULAR MEETING MINUTES  
WEDNESDAY, MAY 22, 2019 – 6:00PM  
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

**APPROVED**

**Present:** Chairman Jim Spanos, , Member Mark Ehrman (participated by phone), Member, Selectmen's Representative OJ Robinson, and Alternate Paul Beaudin

**Members Excused:** Alternate Deanne Chrystal, Stephen Noseworthy, Vice Chair Joseph Chenard

**Members Absent:** None

**Staff Present:** Town Planner Carole Bont & Town Manager Alfred "Butch" Burbank

**Staff Excused:** Elyn Franklin, Recorder

**Guests:**

- **Mark A. LeClair d/b/a Seven Birches Winery, (APPLICANT)** nonresident, of 25 Claybrook Drive, Plymouth, NH 03264 for property at 25 South Mountain Drive #A14, Lincoln, NH 03251 a tenant in the former Peaked Moon Retail Shop/Bakery in the Village Shops building at 25 South Mountain Drive #A14 (Map 118, Lot 046 - Unit A14) owned by Village Shops ICH, LLC of PO Box 127, Lincoln, NH 03251 (Marcia and John Imbrescia).
- **Renee A. Clermont Blood**, nonresident, 557 US Route 3, Lincoln, NH 03251-4128, PO Box 172, North Woodstock, NH 03262, General Manager for RiverWalk at Loon Mountain, LLC (**ABUTTER to Village Shops**), (Map 118, L044) at 22 South Mountain Drive, Mail: 33 Brookline Road, PO Box 636, Lincoln, NH 03251-0636.
- **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.
- **Kim Pickering, executive director of the Western White Mountain Chamber of Commerce**, nonresident, 104 Lost River Road, North Woodstock, NH 03262.
- **Delia M. Sullivan**, resident, 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

o 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.**

*Member Steve Noseworthy, Vice Chair Joseph Chenard and Alternate Chrystal was excused.*

*Paul Beaudin was seated.*

**II. CONSIDERATION of meeting minutes from:**

• **May 8, 2019**

(Chairman Jim Spanos, Vice Chair Joseph Chenard, Selectmen's Representative OJ Robinson, Member Mark Ehrman – participated by phone, Member Stephen Noseworthy, and Alternate Paul Beaudin)

**Motion to accept minutes with corrections: Robinson**

**Second: Ehrman**

**All in favor: 5-0**

**Motion carries.**

**III. NEW BUSINESS**

**A. 6:00 PM. Site Plan Review – Application for Site Plan Review approval for an expansion of use per Article IV A of the Site Plan Review Regulations to expand the currently offered atrium wine-tasting experience/retail shop currently located in the Village Shops to include an additional 1250 square feet of space outdoors.**

**1. Applicant:**

Mark A. LeClair d/b/a Seven Birches Winery  
25 Claybrook Drive  
Plymouth, NH 03264

**2. Property Owner:** John & Marcia Imbrescia d/b/a The Village Shops ICH, LLC,  
(c/o) P. O. Box 127, Lincoln, NH 03251-0127

**3. Property:** 25 South Mountain Drive Unit A4. (Map 118, Lot 046 - Unit A4)

Applicant Mark A. LeClair d/b/a Seven Birches Winery of 25 Claybrook Drive, Plymouth, NH 03264 for property at 25 South Mountain Drive #A14, Lincoln, NH 03251 is currently operating a wine tasting retail operation in the former Peaked Moon Retail Shop/Bakery in the Village Shops building at 25 South Mountain Drive #16 (Map 118, Lot 046) owned by Village Shops ICH, LLC of PO Box 127, Lincoln, NH 03251 (Marcia and John Imbrescia). He wants to offer the same experience/retail experience in the 1,250 square feet of patio space outdoors. The property is located in the Village Center (VC) District.

**Presentation:**

Mark LeClair said he is looking to expand his Seven Birches Winery liquor license to include his outdoor patio. His wine tasting operation offers usually five (5) samples of wine, around two ounces (2 oz.) each. The Liquor Commission has seen the space and given their approval provided that the Town agrees. LeClair said he will start with five (5) tables, each with four (4) seats, creating a total of twenty (20) spots. There is room for one hundred (100) seats outdoors, but he will start small to gauge customer interest. The wine is all sold indoors, so it will not be an outdoor bar.

Member Beaudin asked if LeClair planned to have any outdoor music. LeClair replied no.

Selectmen's Representative Robinson asked how customers get from the atrium to the outdoor area. LeClair replied the customers do have to walk down the main hallway of the building to get outdoors. However, no one will be walking through this area with wine in their hands, as that activity is not licensed. There will be a staging area outdoors on the patio from which their staff will work. The Liquor Commission was okay with this as well.

**Motion to open public comment: Robinson****Second: Ehrman****All in favor: 4-0****Motion carries.**

No public comment.

**Motion to close public comment: Ehrman****Second: Robinson****All in favor: 4-0****Motion carries.****Motion to accept waiver request item 1: Robinson****Second: Ehrman****All in favor: 4-0****Motion carries.****Motion to accept waiver request item 2: Ehrman****Second: Robinson****All in favor: 4-0****Motion carries.****Motion to accept the application as complete: Robinson****Second: Ehrman****All in favor: 4-0****Motion carries.**

Robinson asked Planner Bont if she saw any conditions required of this application. Planner Bont replied no.

**Motion to approve the site plan as applied for: Robinson****Second: Ehrman****All in favor: 4-0****Motion carries.**

**B. 6:00 PM. Notification of governmental land use, construction or development of land occurring on government-owned land under NH RSA 674:54 Governmental Land Uses. Use of a portion of Town-owned land known as Map 112, Lot 008 & 008 as “Riverside Park” with two phases, Phase I with a skateboard park to be commenced within sixty (60) days.**

**Presentation:**

Town Manager Burbank submitted a memorandum to the Town Planning Board that gives notice that the Town of Lincoln will begin construction of the Riverfront Park on or about July 29, 2019 as required by RSA 674:54. (See Appendix A.)

Town Manager Burbank said that giving notice to the Town Planning Board today starts the clock, as the Town did not notify the Town Planning Board previously. The Town was scheduled to have the work begin in Riverside Park on June 10<sup>th</sup>.

The entrance to the park and the public parking lot will be the first areas of concentration, along with clearing trees for the trails and the skate park. Because of the terms of the grant, the parking lot and kayak access to the river must be completed first, and that constitutes “Phase I”. Town Manager Burbank said he hopes Phase I will be functional before snow flies in fall. He wants this project to be done tastefully and with good quality to set the bar for their future phases.

Phase II will depend on the monies left from the grant. Phase II will involve remediating a small area down by the river, as the Department of Environmental Services (DES) found trace pollutants from the old sewer treatment plants. The plan is to make a raised hiking path area there with benches to overlook the park. Phase I will ensure that the snowmobile corridor is open.

Town Manager Burbank said he has an upcoming meeting with Jean’s Playhouse about their easement, to either enhance their parking but complement their entrances.

**Motion to hold public hearing on June 12 according to RSA 674:54: Beaudin**

**Second: Robinson**

**All in favor: 4-0**

**Motion carries.**

Manager Burbank brought up an issue from town hall. He just had the printers codified by department, as there are skyrocketing copier costs. He would ask the Board to consider using computers as much as possible to minimize printing. The cost is escalating so he is taking steps to track where the paper is going.

Alternate Beaudin asked if applicants could pay a printing fee for bringing their copies.

Member Ehrman suggested using Google Drive or Drop Box to share files rather than email, and having every member of the Planning Board bring their laptops to the meeting.

In addition to the printing costs, Robinson pointed out that Planner Bont's time is another cost to consider in preparing piles of paper for one single meeting.

**IV. CONTINUING AND OTHER BUSINESS (Staff and Planning Board Member/Alternates).**

- A. 6:00 PM. Continued discussion about creating a process for selling lots in the Lincoln Industrial Park and a list of criteria to use when looking at proposals from potential buyers. Also, discussion about whether the Planning Board is the proper board to address this matter.**

**Discussion:**

Alternate Beaudin read his letter to members at the meeting. (See Appendix B.)

In his letter Alternate Beaudin referenced NH RSA 41:14-a.

**TITLE III  
TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES  
CHAPTER 41  
CHOICE AND DUTIES OF TOWN OFFICERS  
Selectmen  
Section 41:14-a**

**41:14-a Acquisition or Sale of Land, Buildings, or Both. –**

I. If adopted in accordance with RSA 41:14-c, 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 the selectmen receive the recommendation of the planning board and the conservation commission, where a board or commission or both exist, they shall hold 2 public hearings at least 10 but not more than 14 days apart on the proposed acquisition or sale; provided, however, upon the written petition of 50 registered voters presented to the selectmen, prior to the selectmen's vote, according to the provisions of RSA 39:3, the proposed acquisition or sale shall be inserted as an article in the warrant for the town meeting. The selectmen's vote shall take place no sooner than 7 days nor later than 14 days after the second public hearing which is held.

II. The provisions of this section shall not apply to the sale of and the selectmen shall have no authority to sell:

- (a) Town-owned conservation land which is managed and controlled by the conservation commission under the provisions of RSA 36-A.
- (b) Any part of a town forest established under RSA 31:110 and managed under RSA 31:112.
- (c) Any real estate that has been given, devised, or bequeathed to the town for charitable or community purposes except as provided in RSA 498:4-a or RSA 547:3-d.

**Source.** 1994, 197:3. 1997, 38:1. 2001, 187:2. 2005, 80:1. 2007, 221:2. 2008, 109:1, eff. July 27, 2008.

**What is the Effect of the Deed Restrictions VS Land Use Plan Ordinance Requirements?**

Member Ehrman said he believes Alternate Beaudin mistakes the intent and process. According to Ehrman, the issue the Planning Board discussed was not whether the Planning Board should make a decision or recommendation. The issue was that the Board of Selectman asked the Planning Board for their opinion on the sale. The fact that there is a conflict between the restrictions that are registered on a deed and the requirements under a Land Use Plan Ordinance (LUPO) is an everyday occurrence which happens all the time. The law does not require a Town Meeting vote every time a private party places a restriction in a deed that runs with the land.

Member Ehrman said this discussion is not related to RSA 41:14A because the Board of Selectmen's request is not related to changing the Land Use Plan Ordinance (LUPO). The Planning Board can be bound by their former behavior as well, which is something to consider.

Alternate Beaudin believes the process should be fair for everyone. Beaudin said he believes that fairness comes in equity between the LUPO and a vote of the Town. Beaudin said there needs to be more uniformity as to what the requirements really are so there is a level playing field.

Member Ehrman said there is no requirement that every lot in any particular zone be defined by the zoning requirements in the LUPO and have no further restriction. The zoning ordinance or LUPO requirements set a broad envelope. If the Planning Board and staff does not know what happened historically in this instance, then we need to try and reconstruct what happened to the best of our ability.

Member Ehrman said that based on what he has learned, he believes that the lots was not intended to be sold as fast as possible.

Alternate Beaudin said the expectations associated with the Lincoln Industrial Park have continued to change over time, especially in the area of using the lots for commercial storage.

Planner Bont clarified that the land was donated to the Town by the Catholic Church in 1970 without restrictions on its use. Site Plan Review approval or land use plan for the Lincoln Industrial Park was first conceived in 1993. The subdivision plan to create the Lincoln Industrial Park was approved by the Planning Board and recorded in 2006. The first transfer of two (2) of the lots to Michael Donahue, Sr., took place by quitclaim deed in 2009. Those deed transfers were made in exchange for the development of the lots by Michael Donahue, Sr. The next transfer of one (1) of the lots in the Lincoln Industrial Park to the Sullivans was not made until 2012. Member Ehrman said, however, somehow all the deed restrictions and requirements ended up being imposed on the owners in their deeds for some reason and no one really knows why.

Delia Sullivan said Donahue signed something stating that in eighteen (18) months Donahue was going to put up a building that housed or was rented to subcontractors and businesses to create a type of cooperative. Donahue never did that. Because Donahue had so much money invested in the project, he got upset whenever the Town wanted to sell a lot for a lower price than he expected back at the time he made a bid to develop the industrial park in 2006 (before the economy tanked). Evolution happened and the Board of Selectmen wanted bigger business to pay bigger money for these lots so Donahue could recoup his development costs. But the covenants the Sullivans and the Donahues agreed to when they accepted the quitclaim deeds signed by the Town is what the Town agreed to – **on-site employees**.

Delia Sullivan said in both the Donahues' deed and the Sullivans deed, the conditions in paragraph (b) say:

b. "any commercial or light industrial use of these lots or the structures thereon must 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."

And the conditions in paragraph (d) say:

d. "outside storage of materials will be limited to those storage uses approved by the Town of Lincoln which approval shall not be unreasonably withheld."

Delia Sullivan said the first time O'Connell came in to talk to the Board of Selectmen about purchasing a lot within the Lincoln Industrial Park, O'Connell said he would be using the space for storage, but when he found out there were covenants that would not allow storage, he said he would be building his cabinets there. *[Note: Kurt O'Connell is a local builder from Woodstock, who made the initial offer in March of 2019 to purchase a parcel from the Town known as "Lot 4" in the Lincoln Industrial Park (Map 109, Lot 019 – 0.36 Acres) to center his construction company.]*

Alternate Beaudin said he understood that as long as both parties agree to it, the parties can change those covenants. Member Ehrman disagreed.

Selectmen's Representative Robinson agreed with Member Ehrman that the LUPO is irrelevant to this conversation. The LUPO does not affect the recorded deed covenants. As Representative of the Board of Selectmen, Robinson reiterated that the BOS is looking for input from the Planning Board on the process.

Member Ehrman proposed that the Planning Board incorporate all of the covenants found in any of the deeds as evidence of presumed intent at the time of the transfer to the Sullivans – evidence of what their legitimate expectations were for the property. Member Ehrman also suggested that the Planning Board use any additional evidence to try and derive what may have been additional expectations the Sullivans had at the time of purchase. For example, Member Ehrman suggested looking at the sales materials used to induce the Sullivans to buy the lot from the Town.

Alternate Beaudin said the deed restrictions on that piece of property are not being adhered to, and the Planning Board should consider that fact at a further meeting.

Kevin Sullivan said when he and his wife Delia Sullivan purchased their lot in 2012, they were told they need at least three (3) on-site employees. At the time, both the Planning Board and the Board of Selectmen told them about this particular requirement. They were also told they had to erect a building on the lot, but erecting a building was already in their business plan.

Selectmen's Representative Robinson asked members of the Planning Board if they thought the Town should add an employment requirement to the list of bid requirements for the land.

Alternate Beaudin said if Selectmen's Representative Robinson looks back in the Board of Selectmen's minutes, he believes the Board of Selectmen voted to relieve Michael Donahue, Sr., of the building requirement, despite what the deed restrictions were.

**Workforce Housing Proposed Within the Industrial Park:**

Kevin Sullivan brought up workforce housing issues. He said even since the lot was sold to their family as a lot within a “business park”, two (2) selectmen have stated that they want workforce housing in the Lincoln Industrial Park.

Member Ehrman pointed out to the other Planning Board members that this statement is an example of the Planning Board’s responsibility to reconstruct the expectations of the Town’s buyers of lots within the Lincoln Industrial Park. It is not fair for the Town to go back and change the covenants on purchasers’ land after they purchased the land.

Delia Sullivan brought up the hotel that was discussed to be built in Lincoln, and ever since these applicants began looking for workforce housing, the Boards began pushing the idea of workforce housing in the industrial park. She believes that there might be a chance O’Connell wants to build workforce housing in those industrial park lots. Delia Sullivan would like to buy Lot 4 which is adjacent to her current lot as previously she was told she could not buy the lot.

**On-Site Employment**

Margie Gozdiff said one thing important in this process is the word “on-site.” In all meetings she has attended, there has been a debate on this term, especially related to employment. She said “on-site” means that an employee works in the space.

Representative Robinson said there is a confusion as to why the 2006 Board of Selectmen required three (3) on-site employees (such as tradesmen) and what their goal was. One idea was that the Board of Selectmen wanted there to be a place in Lincoln for tradesmen to do business and the employee requirement was to keep these businesses for using the space for storage alone. These requirements seem somewhat contradictory. Chair Spanos confirmed this was the idea behind the 1993 decision.

Chair Spanos said the Lincoln Industrial Park discussion will go on the agenda again for the June 12, 2019, Planning Board meeting.

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

*None.*



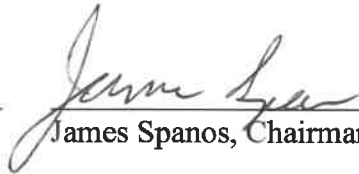
**V. ADJOURNMENT**

**Alternate Beaudin made a motion to adjourn. Ehrman seconded the motion and the Board voted all in favor. The motion carried, and the meeting adjourned at 7:45 PM.**

Respectfully submitted,

***Ellyn Franklin***  
***Recorder***

\_\_\_\_\_  
Date Approved: June 12, 2019

  
\_\_\_\_\_  
James Spanos, Chairman

