

**LINCOLN PLANNING BOARD
REGULAR MEETING MINUTES****APPROVED****WEDNESDAY, AUGUST 27, 2014 – 6:00PM****LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

Present: Vice-Chairman Jim Spanos, Clerk John Hettinger, OJ Robinson, Selectmen's Representative, Paula Strickon, Norman Belanger (alternate), and Callum Grant (alternate).

Members Excused: Chairman R. Patrick Romprey, Taylor Beaudin (alternate)

Members Absent: None

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

Town Attorney Present: Attorney Peter Malia of Hastings & Malia Law Office, PA, 376 Main Street, PO Box 290, Fryeburg, ME 04037-0290

Guests:

Presenter for One Love Brewery, LLC:

- Michael Snyder, 23 Cedar Point Road, Durham, NH 03824-3306, Owner of One Love Brewery, LLC.

Alpine Adventures Complaint (Abutters and Owners):

- Patrick F. (Frank) Gagne, abutter to Alpine Adventures (Map 112, Lot 058) 15 Labrecque Street, Lincoln, NH 03251
- Velma J. Gagne, abutter to Alpine Adventures (Map 112, Lot 058) 15 Labrecque Street, Lincoln, NH 03251.
- David Thompson, abutter to Alpine Adventures (Map 112, Lot 057), 11 Labrecque Street, Lincoln, NH 03251.
- Donna Thompson, abutter to Alpine Adventures (Map 112, Lot 057), 11 Labrecque Street, Lincoln, NH 03251.
- Jim Champagne, abutter to Alpine Adventures (Map 112, Lot 044), 28 West Street, PO Box 1045, Lincoln, NH 03251, , N.L.I., Inc., PO Box 67, Lincoln, NH 03251-0067.
- Jeff Woodward, General Manager of Whale's Tale Waterpark and Alpine Adventures, LLC, 41 Main Street, PO Box 157, Lincoln, NH 03251-0157, owned by N.L.I., Inc., PO Box 67, Lincoln, NH 03251-0067.
- OJ Robinson, partner in Whale's Tale Waterpark and Alpine Adventures, LLC, 41 Main Street, PO Box 157, Lincoln, NH 03251-0157, owned by N.L.I., Inc., PO Box 67, Lincoln, NH 03251-0067.

Presenter for Herbert Lahout:

- Herbert Lahout of 64 Sunset Hill Road, Sugar Hill, NH 03586, owner of 31 Main Street, Lincoln, NH (Map 112, Lot 028) location of the former Bill & Bob's Famous Beef House building and 33 Main Street, Lincoln, NH (Map 112, Lot 027) location of the former Pinestead Quilt Building.
- Attorney Steve Samaha, Attorney for Herbert Lahout, P.O. Box 70, Littleton, NH 03561

Abutters and interested parties to land of Herbert Lahout:

- Brenton ("Brent") Drouin, Owner of Century 21 Mountainside Realty, 49 Main Street, Lincoln, NH 03251, located on property owned by abutter 49 Main Street, LLC (Map 112, Lot 055) PO Box 127, Lincoln, NH 03251-0987.
- Kathy Phillips, Associate Real Estate Broker for Coldwell Banker, 189 Main Street, P.O. Box 987, Lincoln, NH 03251-0987.
- Joseph Lahout, Jr., President of Lahout's Country Clothing & Ski Shop, 245 Union Street, Littleton, NH 03561.
- David Rodgers, d/b/a Rodger's Ski Shop and principal in Great Stone Face Skier, LLC, P.O. Box

68, Lincoln, NH 03251 who owns: [29 Main Street (Map 112, Lot 026)], [9 Donovan Drive (Map 112, Lot 013) and 5 Railroad Street (Map 112, Lot 014)(now merged)].

- Helen Rodgers, d/b/a Rodger's Ski Shop and principal in Great Stone Face Skier, LLC, P.O. Box 68, Lincoln, NH 03251 who owns: [29 Main Street (Map 112, Lot 026)], [9 Donovan Drive (Map 112, Lot 013) and 5 Railroad Street (Map 112, Lot 014)(now merged)].
- William Burdin, Attorney for David Rodgers, P.O. Box 44, Windham, NH 03087

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- I. **CALL TO ORDER** by Vice Chair Spanos; announcement of excused absences, if any, and seating of alternates(s), if necessary.

The meeting was called to order at 6:10PM.

Vice Chair Spanos will be acting Chair

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- II. **CONSIDERATION** of meeting minutes from:
August 13, 2014

Motion to approve with corrections the minutes of August 13, 2014

Motion: Jim Spanos

Second: John Hettinger

All in Favor: (4-0)

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

- A. **6:00 pm.** According to NH Revised Statutes Annotated 676:4,I (d) and the Town of Lincoln Site Plan Review Regulations and Land Use Plan Ordinance, the Town is required to notify the public of a proposal for a change of use. You are hereby notified that Applicant Herbert Lahout, of 64 Sunset Hill Road, Sugar Hill, NH 03586, received **conditional approval** from the Lincoln Planning Board on March 26, 2014, to change the use of a business located on Tax Map 112, Lot 27 (31 Main Street) and Tax Map 112, Lot 28 (33 Main Street) (now merged) from retail space to a restaurant. The lot is located in the Village Center District. The Planning Board approved the Site Plan Review Application with the following conditions:

Provided Lahout provides the rest of the application to that it is complete as set forth above, the Planning Board approved the Voluntary Lot Merger and approved the Application for Site Plan Review:

1. For Retail/Office Space as proposed; or
2. For Restaurant Space provided the building is reconfigured to accommodate sufficient parking.
3. In addition, the 991 square feet being demolished can be rebuilt as shown on the approved Site Plan.
4. If the building is reconfigured to accommodate the restaurant and the addition is less than 990 square feet, those square feet are grandfathered for the additional footage up to 991 square feet.

Applicant & Property Owner:

Herbert J. Lahout, 64 Sunset Hill Road, Sugar Hill, NH 03586

Property Location: Tax Map 112, Lot 27 (31 Main Street) and

Tax Map 112, Lot 028 (33 Main Street)
(Village Center District)

Applicant will present evidence that the conditions have been met to the Planning Board during a regular meeting of the Board on:

Date: **Wednesday, August 27, 2014**

Time: 6:00 pm

Location: Lincoln Town Hall
148 Main Street
Lincoln, NH 03251

Then the Planning Board will hold a public hearing. Should a decision not be reached at the public hearing, this application will stay on the Planning Board agenda until such time as it is either approved or disapproved.

Vice Chair Spanos asked Herbert Lahout to present his case to the Planning Board. Lahout wrote a letter to the Planning Board. Lahout asked Bont to put his letter as part of the recorded minutes. Lahout then read the letter out loud to the Planning Board.

Hettinger asked to look at the current parking permitted by the application. Lahout stated there was no parking approved. Lahout wanted the Planning Board to base his application on on-street and municipal parking; he did not want the Planning Board to address his parking lot as it was not part of this application.

Strickon asked who would actually use the current parking area at his buildings. Lahout stated that he did not know, “maybe the birds” was his comment.

Strickon asked why Lahout’s parking lot was not applicable to this restaurant parking. Lahout repeated that he did not want to include the parking lot as part of the parking for the restaurant. At this point Lahout did not want the parking lot at the restaurant to be included in the application process.

Vice Chair Spanos then stated that Lahout was there because of a parking issue and if Lahout did not want to talk about his parking lot then why was he there. Lahout said he had enough on-street and municipal parking for a 96 seat restaurant.

Vice Chair Spanos asked Lahout where this parking was. Lahout then said his parking would be all over the town. Lahout said that the Gypsy Café, the Thai Restaurant and Subway were allowed to rely on on-street and municipal parking. He believes he should be allowed to do the same for his restaurant.

Strickon then stated that for all of the places Lahout listed, all have parking areas that are easily accessible.

Strickon then asked Lahout that if she wanted to go to Lahouts’ restaurant where would she park? Lahout responded, “On-the-street parking”.

Strickon then stated there were only about five (5) on-the-street parking spaces in front of the area where the Pinestead Quilt building is located. Lahout said that his restaurant customers could park up by Alpine Adventure or in the municipal parking lots up by the Town Offices.

Strickon said that the walk from the municipal parking areas was too far for restaurant patrons to walk. If it were raining or snowing, Strickon did not feel that patrons would walk that far. Strickon then asked

Lahout what point he was trying to make. Lahout said that the point he is trying to make is that based on how the Planning Board has allowed other businesses to rely on municipal and on-street parking that he has every right to have a 96 seat restaurant based on on-street and municipal parking only.

Strickon pointed out that Lahout did not have any municipal parking areas near his Pinestead Quilt building. Lahout said that he did have a lot of municipal parking across the street from the Lahout's store.

Strickon said that she did not think that the parking would meet with any ADA (American Disabilities Act) requirements. Lahout asked Strickon where in the Land Use Plan Ordinance or the Site Plan Review Regulations or in any rules or regulations for the Town of Lincoln did it say the ADA rules apply. Lahout also stated that maybe Strickon did not like to walk, but he did like to walk. Strickon then stated that she was quoting ADA rules, not any of the Town of Lincoln's ordinances or rules and regulations.

Lahout then asked if any of the municipal lots had handicap parking. Strickon confirmed that the municipal lots did have handicap parking, but that the spots were too far from his restaurant to be deemed applicable for parking for his restaurant. Strickon also said that Lahout had an unrealistic expectation of what he could achieve.

Lahout asked where in the Town of Lincoln Site Plan Review Regulations did it say how far municipal parking could be from a restaurant.

Vice Chair Spanos read the regulations stating "to provide 1 parking space per 4 seats in the restaurant."

Lahout claimed that he did not need comply with that requirement and that he could rely on street-side municipal parking.

Robinson read page 17 of the Land Use Plan Ordinance on Parking and Off-Street Loading.

Lahout stated that a restaurant use was not a new use and would not be an expansion of an existing use so he did not think that the parking requirements should apply.

Vice Chair Spanos asked the Town Attorney Peter Malia if he had any comments. Attorney Peter Malia suggested that the meeting be continued. He recommended that the Planning Board continue with questions from the Planning Board.

Lahout also stated that he had a letter from his brothers indicating that the Lahout brothers had ample parking in back of the Life is Good store and Columbia store that could be shared. Lahout said that parking lot would be used for employees.

Hettinger asked if Lahout felt that the patrons to the restaurant would walk almost a quarter of a mile in rain and snow from a municipal parking area on Route 112 to go to the restaurant.

Lahout said that based on other restaurants use of municipal parking, his restaurant should also get a "get out of jail free card". Lahout said that the Planning Board should make rules about parking. Lahout said that it was not fair to him as an investor to buy a piece of property and then the Planning Board change the rules mid-stream.

Vice Chair Spanos asked Lahout who made the representation that Lahout had enough parking. Lahout said that he did not say that.

Strickon explained that the Gypsy Café has a financial agreement with the Linwood Medical Center next door for parking restaurant patrons on the weekends, Friday, Saturday and Sunday. Once the Medical Center is closed the Gypsy Café customers may use their parking lot.

Lahout asked about Alpine Adventures parking because he felt that the Alpine Adventures business has grown dramatically with no requirement for additional customer parking.

Strickon said that Alpine Adventures is not a restaurant. Strickon said that the people who go to Alpine Adventures are much more physically capable of walking a quarter mile than the people who might go to a restaurant. Lahout said that Strickon was making generalizations about herself. Strickon agreed that she was. Lahout said that Strickon was unfairly characterizing herself as the general public.

Lahout said that the Gypsy Café is not being required to have onsite parking. Strickon explained Gypsy Café has a certain amount of off-site parking that maybe other restaurants do not have because they have made a private arrangement with another entity for parking.

Lahout also pointed out that the Planning Board had allowed Subway to exist without requiring onsite parking.

Norman Belanger pointed out that all of the customers of Subway park at the Herbert Lahout Shopping Center next door also owned by Lahout. Lahout said that Subway does not have any onsite parking because he owns the entire lot around them. Vice Chair Spanos asked Lahout why he let Subway's customer's park in Herbert Lahout Shopping Center lot.

Lahout said that he bought the Pinestead Quilt and Bill and Bob's Famous Roast Beef properties expecting to be treated like everyone else. Lahout said that the Planning Board should make some rules like the Towns of Littleton and Bethlehem have regarding municipal parking. Lahout said that he was not arguing with the Planning Board but that if the Planning Board is going to enforce parking, it must be in the rules, and "it ain't in the rules". Lahout said that the Planning Board was not being fair to him.

Strickon said that it would not be fair to the person that he was planning to rent to if there was no onsite parking for the restaurant. Strickon stated that Lahout has blacktopped the lot and put yellow lines on the blacktop. It will be deceiving to the person who intends to rent the lot.

Lahout stated that he was asking the Planning Board to approve parking for a restaurant based strictly on the available on-street and municipal parking and not on any parking on the lot itself.

Robinson said that the initial conversation the Planning Board had with Lahout prior to this meeting was about how Lahout was going to fit the required parking spaces into that physical piece of land next to the Pinestead building. That was the basis for the entire discussion with the Planning Board before tonight. Now Lahout is changing his request. Robinson stated that the rules are written in the Land Use Plan Ordinance and in the Site Plan Review Regulations. Robinson said that Lahout can argue about whether the use of the building was changing, but the rules about parking are already written and are part of both the Land Use Plan Ordinance and the Site Plan Review Regulations. Lahout demolished one building that used to be Bill and Bob's Famous Roast Beef Restaurant. Lahout is proposing to use the Pinestead Quilt building. Although the Pinestead Quilt building was at one time, an Italian restaurant, its most recent use was as a retail quilt shop. There needs to be a change of use focus.

Lahout disagreed saying when he merged the two lots, the restaurant use of Bill and Bob's Famous Roast Beef went with the merged lot.

Robinson stated that from a common sense standpoint, the Planning Board was not there to determine what someone owns or what is reasonable. For example, can someone walk two miles to go to a restaurant in the snow? That is not what the Planning Board is here to determine. Robinson stated that the Planning Board is here to plan for the Town of Lincoln. One of the problems the Town of Lincoln is currently facing is a problem with parking. This problem occurs all up and down Main Street.

Lahout said the Planning Board was singling him out. Lahout said the Town does not have a legal foot to stand on. Lahout said that the Planning Board has never enforced the rules before.

Town Manager Burbank stated that enforcement of the parking provisions in the Site Plan Review Regulations and the Land Use Plan Ordinance falls on the shoulders of the Town Manager and the Planning and Zoning Administrator. The requirement that a commercial establishment provide for off street parking has been in the Land Use Plan Ordinance since they were written back in 1986 with very few changes. Town Manager Burbank felt that the Planning Board needs to zero in on is whether the parking requirement is justified. Lahout was trying to meet the requirements by using his brothers' parking spaces behind their shops and by using the west side part of Lahout's parcel where there is now a paved parking area.

Town Manager Burbank informed the Planning Board that he counted the number of municipal parking spaces. Burbank reminded the Planning Board that the whole parking lot at the Village Shops (also known as "the Mill") is not municipal parking. Town Manager Burbank stated the municipal parking is as follows:

- 8 spots along Route 112 at the Mill complex (aka "The Village Shops") (Map 112, Lot 046)
- 15 spots at the Town Hall on the upper level – one is handicapped (Map 118, Lot 001)
- 4 spots in front of the Police Station – one is handicapped (Map 118, Lot 001)
- 26 spots in the bottom Town Offices Parking Lot – none are handicapped (Map 118, Lot 001)
- 10 spots in the lot behind Flapjacks on Church Street – none are handicapped (Map 118, Lot 058) (8 during the winter because there is no place to put the snow)
- 77 spots along the entire north side of Route 112/Main Street– none are handicapped (See Map 112, Map 113, Map 117, and Map 118) (Starts in front of Map 112, Lot 026 and ends in front of Merle Richard's house on Map 117, Lot 006.)

Town Manager Burbank stated that was all the municipal parking in town. Town Manager Burbank wants the Planning Board to know that when they talk about municipal parking, all other parking lots in town are privately owned. Town Manager Burbank noted that currently people take private parking spaces "without ramifications". Drivers use the private, non-municipal parking lots in town as if they were not private. Burbank wanted to remind the Planning Board that the Town of Lincoln has limited municipal parking.

Lahout said that the Town of Lincoln had no rules about parking. Lahout, said parking requirements in Lincoln have never been strictly enforced. Lahout said that not only had the parking regulations been subjectively enforced, but that the town had no rules about parking. Lahout said this would be a good opportunity for the Planning Board to create stronger rules about municipal and street side parking. Lahout said he was an unsuspecting investor who thought that on-street parking was no problem on the Main Street.

Robinson corrected Mr. Lahout, stating that Lahout's original presentation was for 10 or 12 off street parking spaces on Lahout's lot (Map 112, Lots 027 and 028, now merged). Robinson said that Lahout was taking a total turn-around from his last Planning Board hearing. Lahout's new position about what

he intends to have for parking is all new to the Planning Board. Robinson asked Lahout why the off street parking and maps were included with his application if they are not to be considered by the Planning Board.

Lahout said that he had made a mistake. After legal consultation, Lahout asked the Planning Board to look at approving a change in use for the restaurant with only street side and municipal parking for the restaurant. Lahout said there were no regulations about street side and municipal parking. Lahout said that the last thing he would want to do is bring any legal action against the Town of Lincoln, however Lahouts' "legal consultants thought legal action was necessary".

Attorney Peter Malia agreed with Robinson that Lahout's presentation was a drastic departure from what was expected tonight. In an e-mail dated August 14, 2014 Lahout said "as it stands now on site I have 12 parking spaces which will accommodate a 48 seat restaurant". Attorney Malia expected a discussion about those 12 parking spaces. He also might have expected discussion about whether or not it was too late for David Rodgers to challenge the access here, or whether the Planning Board should count those 12 parking spaces, or how many seats his restaurant could have, but now Lahout has come in without a parking plan and he is saying that he has enough on-street and municipal parking for a 96 seat restaurant. Malia found Lahout's new position to be "unbelievable". It is not anything that the Planning Board could approve. Under that analysis nobody in Lincoln would have to present any type of plan for off street parking at all for any type of commercial businesses. Attorney Malia said Lahout had presented an unbelievable proposal that the Planning Board could not approve.

Lahout said that parking is not in the rules for the Town of Lincoln. Attorney Malia responded by quoting the Site Plan Review Regulations on page 17, section C regarding Landscape and Site Planning Requirements section 1A Parking.

Attorney Malia then quoted the Land Use Plan Ordinance page 12, section A on Parking and Off-Street Loading.

Lahout said that no new use was being established and no existing use was being enlarged. Lahout said nothing on the lot has changed. Lahout asked Attorney Malia to comment on his point. Lahout said that the Planning Board was trying to apply a rule that was not applicable and said that Attorney Malia's argument went "out the window".

Attorney Malia noted that the Land Use Plan Ordinance does say all proposed "new" construction. Lahout is tearing down one building and taking a corner off the other building and adding 900 square feet.

Lahout said that he was not adding 900 square feet, but has an option to do that.

Attorney Steve Samaha, speaking for Herbert Lahout said there is no question about what the Land Use Plan Ordinance says. Attorney Samaha said that in this case it was a factual question as to whether or not Lahouts' application is for a new use or whether Lahout is enlarging or expanding an existing use. Samaha stated that as a factual matter, if one of those two conditions were not satisfied then these parking regulations in the Land Use Plan Ordinance and the Site Plan Review Regulations do not apply. Samaha also said that it is within the prerogative of the Planning Board to determine whether or not one of those two triggers exist in Lahout's case. The two triggers are: (1) new use; and (2) existing use enlarged.

Strickon stated if the Planning Board looks at the situation from that perspective, the building that was torn down was Bill & Bob's Famous Roast Beef Restaurant which was a restaurant. The building that exists presently that Lahout wants to turn into a restaurant was a quilt shop.

Lahout said that the lots have been merged and the buildings take on the uses of each other.

Hettinger asked if Lahout was looking for a restaurant with 48 seats or 98 seats. Lahout said that the application states 96 seats. Hettinger did not believe that 96 seats would fit in the building. The people have no place to park and they will not walk that far.”

Lahout responded that people will walk that far to get their hands on Patagonia or North Face consumer goods. Lahout felt that Hettinger was underestimating people in general. Hettinger stated that he walks three (3) to five (5) miles a day every day and he would not walk that far to a restaurant.

Lahout said that Attorney Peter Malia had to decide if the parking rules apply to him or do not apply. “That is the \$98,000 question!”

Vice Chair Spanos stated that looking at the Land Use Plan Ordinance it shows when a site plan review is required and there are four (4) conditions. If an applicant goes through the Site Plan Review process, the applicant has to meet the parking requirements.

Attorney Malia repeated that Land Use Plan Ordinance says that the applicant would need one (1) parking space for every four (4) seats for all proposed new construction. However, the regulation also applies to what Lahout is doing because of the Site Plan Review Regulations on page 17 which basically says that the Land Use Plan Ordinance requirements of one (1) space for every four (4) seats applies to all additions, modifications or changes of use to existing structures.

According to Attorney Malia, there is no doubt that Lahout is modifying, adding and changing the use of the existing structures on the two merged lots. In Attorney Malia’s opinion the Site Plan Review Regulations bring in the Land Use Plan Ordinance and the Land Use Plan Ordinance requires one (1) parking space for every four (4) seats, off street parking. Lahout has no off-street parking.

Strickon reminded Lahout that he said at the beginning of the evening not to discuss the black top area, but the black top area is part of his property. The black top area is part of the potential development of the property. Strickon asked Lahout if the black top area was not going to be used for parking, what it was going to be used for.

Lahout stated that part of the plan submitted is the parking plan for this property. Lahout noted there are 12 parking spots and on another plan showed there are 11 street side parking spots. Lahout asked that with the 12 spaces shown on the plan and if the Planning Board were to designate a fair proration of street side parking “this hearing may come to a compromise”.

Strickon told the Planning Board that she went to the Lahout lot and tried to park in each space with a Mazda Miata. She informed the Board that her car could barely fit between the lines. Strickon felt fortunate that she did not have a large SUV.

Lahout told the Planning Board that he has twenty-two (22) apartment complexes and uses nine foot (9’) wide parking spots. Lahout confirmed that his tenants have vehicles that range in size from F350’s to mini cars.

Attorney Malia reminded the Board that the Land Use Plan Ordinance states that parking spaces must be two hundred (200) square feet.

Callum Grant said that the parking spaces next to Lahout's building that have just been black topped and painted with stripes do not exist because there is no access to them. Lahout said that he has a right of way on his deed.

Attorney Malia stated that the scope of Lahout's right-of-way is in dispute now. Mr. Rodgers and Rodger's attorney Bill Burdin wrote a letter back in May that they do not believe that Mr. Lahout should be able to use the driveway to access the parking spaces. Mr. Lahout and his lawyer disagree so that is in dispute. But the issue that a right-of-way dispute does not matter because Mr. Lahout has made it very clear that he does not want the Planning Board to consider those yellow lined parking spaces on his lot because he thinks he has enough municipal and on street parking spaces for a ninety-six (96) seat restaurant.

Norman Belanger said that if Lahout was going to have forty-eight (48) customers he should have twelve (12) parking spots and if he is going to have ninety-six (96) customers he should have twenty-four (24) parking spots. Belanger said that putting the burden on municipal parking would end up encompassing a lot of private parking areas as well. Belanger said that town would be over burdened with parking.

Robinson stated that when Lahout first came to the Planning Board Lahout was singing a different tune. At that time the Planning Board expressed an interest in working with Lahout and looking at the parking spaces on the applicant's lot. The Planning Board encourages development in commercial use because the Planning Board does not want to see vacant buildings on Main Street. Robinson said that what Lahout was now asking the Planning Board to accept – all on-street or municipal parking lots, some of which are a half mile away from the applicant's business – is not realistic.

Lahout said that Strickon made a good point. He then asked the Planning Board to work on a compromise based on the parking plans submitted by him to the Planning Board. Now Lahout wants to retract the prior statement about not including the onsite parking.

Strickon asked Lahout about the nature of the parking agreement Lahout has with his brother. She asked how Lahout would gain access to this parking. Lahout told the Planning Board that his brothers' parking lot is next door – about fifty feet (50') away. Lahout stated that all of the employees would park in the lot behind his brothers' store. Vice Chair Spanos expressed his concern that without a permanent deeded easement such an agreement could go away at any time. Lahout agreed.

Attorney Malia made two points. First, he would not consider any privately owned parking spaces owned by someone else, family member or not, to qualify as off-street parking pursuant to Lincoln's Land Use Plan Ordinance without a deeded easement. Second, he would like to understand exactly what the current proposal is. At the beginning of this hearing Lahout started out with no off street parking. Now Lahout says he has off-street parking. If so, how many spaces does he have and where are they?

Lahout said that Mr. Robinson had a good approach to the situation. Lahout said, "Let's come up with a compromise". But Lahout said he still thinks that the Planning Board needs to start making some rules. Vice Chair Spanos responded that the Planning Board does have rules, but Lahout was interpreting the rules the way he wanted them to read, not the way they were intended to be read.

Lahout asked the Planning Board, "What does the Planning Board think is fair for parking and seats for Lahout's restaurant?"

Malia stated that the email from Lahout on August 14, 2014 states that Lahout has twelve (12) on-site parking spaces. Malia asked Lahout if he could show the Planning Board where the twelve (12) spaces are.

Lahout said that if he did not get an approval for a restaurant that he would probably open a discount warehouse. Lahout said that a discount warehouse would cause the same amount of traffic as a restaurant.

Attorney Malia told the Planning Board that he took a drive to the applicant's lot earlier today; the parking spaces are not two hundred (200) square feet. Attorney Malia asked Lahout if his parking spaces striped on his lot were two hundred (200) square feet. Lahout stated that he could not give Malia a straight answer. The parking spaces were nine (9) feet long and that is what Lahout customarily uses at other buildings that he rents to his tenants.

Lahout asked the Planning Board if it was willing to take into consideration some of the parking spaces on his lot. Vice Chair Spanos said that the Planning Board would be willing to discuss the possibility of counting some on-street parking.

Lahout asked about the twelve (12) parking spaces in front of the Lahout's building located in front of his brothers' property; could he take six (6) of those spaces? Then Lahout said: "12 plus 6 is 18, 18 times 4 is 72 that would allow for 72 seats in the restaurant."

Town Manager Burbank reminded the Planning Board that it cannot keep reassigning the same parking spaces over and over again to different businesses. One option for the Planning Board would be for the Board to determine a percentage of on-street parking that might be counted towards meeting the parking requirements. However, that approach is not in the rules right now. The Planning Board has not yet come up with a formula or percentage of credit to give a Main Street business located on the west bound side of Route 112. The same problem could also arise over on US Route 3. The Town Manager has not researched what a standard calculation for using on street parking would be. Clearly the Planning Board's policy about how to deal with on-street parking has changed back and forth over the years. Currently Lahout is talking about up to ninety-six (96) seats. As an enforcer, Burbank does not see how the Planning Board could determine that. In this case, if the Planning Board appears to be inclined to allow a certain amount of credit for on street parking. It really needs to be negotiated because we do not have it written. The Planning Board can negotiate a percentage with Lahout, but if the Planning Board picks a percentage it will have to stick with that same percentage in dealing with other merchants on Route 112.

Hettinger said that there were twelve (12) spaces in front of the building and some on the side of the building that Lahout may be able to get access to. Town Manager Burbank suggested that perhaps ten percent (10%) of his requirements might be filled with on-street parking.

Lahout showed the Planning Board a diagram of the location of on-street parking spaces that could be used. Town Manager Burbank noted that Lahout counted parking spaces "in his neighborhood" on the drawing towards his total required parking spaces, but they are municipal parking spaces. The Town cannot police the people who park there. Town Manager Burbank stated that people who go hiking or bicycling could use those spots. Those people who use the parking spaces might not even be using the stores.

Hettinger commented that Lahout was planning a breakfast restaurant. He said it was more likely to have competition for the same spaces from other store patrons during breakfast hours, but at night the spaces may be free. Lahout commented that the ski stores owned by Lahout would be better off opening later in the day because there was not much business in the morning.

Hettinger stated that it appears Lahout has twelve (12) spaces for customers and might be able to get more spaces for employees.

Lahout then asked if the Planning Board would be willing to make a deal with him.

Robinson asked if it was realistic to expect that Lahout would be able to get legal access to the parking lot at his brothers' store down the street. Lahout stated that he would not want to obtain legal deeded access or a parking easement from his brothers. Lahout would not want to put his family in that position. Robinson commented that if Lahout sells the restaurant it would be unlikely that he would be able to transfer to the new owner the parking at his brothers' store used for employees.

Lahout then asked the Planning Board to look at his proposal as a combination of on-street parking and onsite parking. Lahout said that the letter from his brother giving permission to have restaurant employees park behind the Life Is Good store might not work. Lahout said that his brothers would not agree to give the parking spaces behind their Life is Good store to a new owner.

Strickon said that, "unfortunately" most people would park across the street at Tedeschi's. Lahout stated that might be good for Tedeschi's to have Lahout's customers park over at Tedeschi's. Lahout went on to say that the Lahout brothers like it when non-customers use the parking lots at their stores because then eventually those people come in to do business at their stores as well. Strickon suggested that Lahout try to make a financial arrangement with Tedeschi to use their parking area. Strickon said that people going out to dinner would not be likely to go into a convenience store and buy food.

Lahout understood that Strickon was trying to resolve the parking issue, but wanted to limit the discussion to three things:

1. on-street parking,
2. on-site parking, and
3. The permission letter from Lahout's brother authorizing Lahout to use parking behind their stores.

Lahout asked the Planning Board to state a specific number of seats for the restaurant. Lahout said that the Planning Board should clarify how they intend to deal with the issue of parking for businesses along Route 112.

Robinson reminded Lahout there are parking regulations already in place. Robinson said that Lahout is only trying to avoid the regulations because they do not fit his needs. However, if Lahout proposes to use twelve (12) on-site parking spaces Robinson would not object to using a reasonable number of on-street parking spaces, but not the whole street. The Planning Board needs to determine if a reasonable number of on-street parking spaces would be three (3) spaces or more. For example, three (3) on-street parking spaces would support twelve (12) seats. If Lahout already has twelve (12) on-site parking spaces at four (4) seats per parking space, that would equal a total of forty-eight (48) seats. Combined the twelve on-site parking spaces plus the 3 off-site parking spaces would support a sixty (60) seat restaurant.

Lahout said that "was fine".

Vice Chair Spanos reminded the Planning Board that the on-site parking spaces still must meet town regulations in terms of size.

Vice Chair Spanos said that the four (4) spaces to the south (left) of West Street were the closest and in front of the properties.

Robinson explained that the regulations which require one parking space for every four (4) seats includes not just the restaurant patrons, but the employees as well. It is in the regulations so that is what the Planning Board needs to enforce. Robinson asked members of the Planning Board if there were twelve (12) parking spaces on Lahout's lot, could Lahout have the right to three (3) spaces that are delineated in that section of roadway. Strickon agreed.

Attorney Peter Malia reminded the Planning Board that this is a public hearing.

Grant expressed his concern that the other component of parking requires off street loading facilities. Where is that addressed? Lahout has a dock in the back of the building. The dock is on wheels and when a UPS truck comes the dock is rolled out. There is a back door in the back of the building that is about 4 feet up.

Motion to open the public hearing:

Motion: John Hettinger

Second: OJ Robinson

All in favor: (4-0)

Public hearing is now opened.

Pete Townsend stated he was not here for Lahout's public hearing, but sees something developing in addressing Lahout's issues that caused another problem which is the reason that he is here. Townsend asked, "Have all the abutters been notified?" Vice Chair Spanos responded that the abutters were notified.

Pete Townsend then stated he has a friend who has a business very close to Lahout's property. There are only three (3) on-street parking spaces in front of his friend's business and his friend needs all three (3) of the parking spaces to run the business. Town Manager Burbank cautioned the Planning Board of assigning parking spaces multiple times with many different businesses.

Attorney William Burdin representing David Rodgers asked if Lahout was asking the Planning Board to consider twelve (12) on-site parking spaces proposed on Lahout's property.

Vice Chair Spanos confirmed that the applicant was asking the board to consider the 12 on-site parking spaces.

Attorney Burdin asked if the Planning Board had seen his letter on May 7th, 2014. Since writing the letter, Attorney Burdin did further research. In his opinion, the case law in New Hampshire is clear. Lahout does not have the legal right to gain access to any of the twelve (12) spaces from Mr. Rodgers' land. Lahout has no State of NH approved curb cut from Route 112. Attorney Burdin understands that Lahout will not get a curb cut from the State of NH. Attorney Burdin entered a letter into the record from surveyor Ray Sabourn. Attached to the letter from Ray Sabourn is a letter from Mr. David Aylward who ran Bill & Bob's Famous Beef House for approximately 20 years.

According to David Aylward, he gained access to the parking area for Bill and Bob's Famous Beef House from the driveway (located on the property presently owned by David Rodgers). Access was based on a license Aylward had from the owner of the adjacent property who did have a state curb cut. He paid a monthly fee for access to the owner of the property. There was no legal permanent access to that property.

Attorney Peter Malia has done some research too. According to Attorney Burdin, Attorney Malia was just involved in a Supreme Court case in New Hampshire where two lots were conjoined. One party was

hoping to get the easement extended to the second lot. The NH Supreme Board said, “It doesn’t work that way.” One lot had the easement. That was the only part of the co-joined lot that was entitled to the easement.

Attorney Burdin said that in Lahout’s case, the second lot (Bill and Bob’s Famous Roast Beef lot) where the striped parking spaces are located, “is not accessible from the street”. Furthermore, the striped paint lines Lahout had drawn marking out the parking spaces, are only nine (9) feet long; they should be eighteen (18) feet long. If someone drives by and takes a quick look, it looks like a big parking area and there is plenty of space for a car to back up and swing out, but those painted lines are only nine (9) feet long. If you go to eighteen (18) feet long there is no space for a car to swing out. There was a truck parked in one of the parking spaces today. There was only about three (3) or four (4) feet behind the truck to the edge of the pavement. So even if Lahout could get access to that area, there is not enough room for those trucks to turn around.

Lahout interjected, “That is why you have a right of way! You have a right to cross the property of the person!”

Attorney Burdin stated he did not want to get into an argument with Lahout about access, but he did want the Planning Board to enter his findings into the record. There is no access. The agenda for today’s meeting asks if the applicant has met all the conditions. Has Lahout met those conditions? There has not been any discussion if he has met the conditions that were imposed back on March 26th. In Attorney Burdin’s opinion, the Planning Board may have to rescind that approval if Lahout has not met those conditions.

Town Manager Burbank asked what the conditions on the approval were. What was the planned use of all buildings? Town Manager Burbank asked Bont if the plans were received within two weeks of March 21, 2014.

Lahout interrupted that there was a typographical error on the application and it had the wrong dates.

Town Manager Burbank asked does the board have the actual conditions for the approval for a change of use, the conditions of the approval and the approval for the planned use of all buildings.

Bont agreed that she had sent the Notice of Decision out late. Lahout confirmed that the Notice of Decision was sent out on May 20th, 2014. “Regardless because he only received it on May 20th that he did not have time to act on it.” Bont stated that at the hearing they talked about two weeks from that date. Lahout asked the Planning Board if he could have more time.

Burdin confirmed that on July 23, 2014, the Planning Board minutes showed that Lahout still had not complied. That date was long over two weeks for him to have to make good. It seems like he has still not met the conditions.

Attorney Malia addressed Attorney Burdin and asked him to clarify the additional case law he was using to support his client’s position on the access issue, since the letter in May. Attorney Malia asked Attorney Burdin if he had anything new to add since he submitted his letter back in May. Attorney Burdin responded that the two new cases he cited were:

1. George A. Cote, Sr. & Myrtle M. Cote v. Richard Eldeen & Dorothy Eldeen, 119 N.H. 491 (1979)
2. Thomas Ettinger & a. vs. Pomeroy Limited Partnership & a. (Decided by NH Supreme Court on July 2, 2014) Attorney Peter Malia represented petitioner.

Attorney Burdin said that the use must be reasonable. The easement use cannot interfere with the servient estate's use of the property.

According to Attorney Burdin, the initial easement was for people at the Quilt Shop or its predecessor to get around to the back of the property for a delivery and maybe to empty a dumpster. Such an easement would anticipate two or three vehicles a week. If, in fact, a restaurant is approved there and there is going to be eleven (11) or twelve (12) parking spaces on-site, those spaces are going to be used every night. The tables, and thus the parking spaces will turn over at least twice, maybe 3 times per night. Those figures (i.e., 11 parking spaces) would project to thirty-three (33) cars a night times seven (7) nights per week. That would represent a six thousand three hundred percent (6,300%) increase in use of what the parties to the easement anticipated when this easement was granted. It is not even close to being a reasonable use or expansion of a use.

Attorney Malia asked Attorney Burdin, "So your opinion is that the planning board should not allow any of the 12 spots to be used toward restaurant seats?" Attorney Burdin agreed.

Attorney Malia said that this was a decision that the Planning Board will have to make at some point.

Attorney Malia did not think that the case he was involved in (Thomas Ettinger & a. vs. Pomeroy Limited Partnership) was controlling in this Lahout-Rodgers matter. Attorney Malia discussed the Ettinger case. Attorney Malia said this was not the correct forum for Attorney Burdin's to resolve or discuss the legal dispute about the easement with Lahout. It is an open question that will possibly be resolved some day in Grafton County Superior Court.

Meanwhile, the Planning Board will have to decide whether or not to allow these twelve (12) spaces or some lesser number than twelve (12) to be used for some calculation for restaurant seats. The problem from Attorney Burdin's client's perspective is that he and his client were not here in March when the conditional approval was issued. From what he understands the property was deeded to Mr. Rodgers 10 days or so before this hearing was held in March. So although Rodgers owned it, he might not have been the owner to receive the notice. In any event he was not here for the hearings. That argument was not presented nor was an appeal taken of the March decision.

This is an issue that Attorney Malia has been thinking about and the Planning Board will have to make a decision on. Is this argument coming in too late? They did not appear in March and they did not appeal the March decision so a conditional approval was in fact entered. Now the Planning Board is just here to determine whether or not Mr. Lahout has satisfied those conditions. Final approval has not been issued yet. There have been other New Hampshire Supreme Court cases that indicated that until final approval is entered the Planning Board can reconsider its decision. Clearly you can do that within the 30 day appeal period. Once you get outside of that 30 day appeal period it becomes a little murkier. In case you needed another difficult condition to grapple with in this case, we have also got that issue.

Town Manager Burbank asked the Planning Board to consider their decision from an enforcement perspective. How should he enforce the ordinance if the Planning Board proceeds and the onsite parking does not meet the requirements? There may be less than twelve (12) parking spaces there.

Hettinger stated that Condition #2 in the approval for Site Plan states that the restaurant space must be reconfigured to accommodate sufficient parking. Hettinger does not see where that has happened because Lahout does not have access to the property. Lahout said that only according to the neighbor he does not have access. Hettinger said that until that issue was resolved condition #2 was not met.

Attorney Samaha, speaking for Lahout, stated that he agreed with what Attorney Malia said in analyzing the legal aspects of the situation. The Planning Board has before them a deed where there is a right of way. Whether or not the intention of the parties at the time the easement was given is broad enough to do what Mr. Lahout wants to do is not for the Planning Board to interpret. It is for a court to determine. If Mr. Rodgers or anyone else wants to challenge the scope of that easement the place for that challenge is in court. Attorney Samaha opined that the Planning Board, based on the fact that Lahout has a right of way, if Lahout meets all the other requirements would be fine as far as the Planning Board process.

Hettinger asked Lahout what the deeded right of way was to.

Strickon protested that the dispute was in litigation. Lahout protested that it was not in litigation (i.e., no one has filed a lawsuit against anyone else yet.)

Attorney Samaha said that he totally agreed with Attorney Malia that if the matter of the easement had been raised early on, then the Planning Board could have considered the scope of the easement. The point is that the issue was not raised. The Planning Board approved the application conditionally. Thirty (30) days went by and nobody appealed it. The issue about the scope of the easement can be raised in court separately from what you are doing here.

Attorney Burdin countered that although the issue of the scope of the easement may well end up in court, there has still been no final approval. The conditions have not been met. The plans that Attorney Burdin has seen, and he has not seen the new ones, have no indication on them where this so called access from the Quilt Shop at the back of the property is actually located on the plans. That is one place where he has not met the requirements. The letter from Roy Sabourn of Sabourn & Tower goes into a lot of detail about the application and how it is deficient. He asked the Planning Board to take a look at the letter without going and reading it into the record.

Robinson recapped saying that Lahout is here before the Planning Board for the board to look at provision #2 of the conditions which is required to be met for restaurant space. The Planning Board approved his building back in March for restaurant space, provided the building was reconfigured to accommodate sufficient parking. The burden is on Lahout to come in here and show that he has sufficient parking. Sufficient parking is defined in these regulations as 4 seats for every parking space. Also defined is a parking space as two hundred (200) square feet. I think at this point I am not ready to approve it, but I would like to see a plan on paper that shows two hundred (200) square feet per parking space. We count those numbers and we can then have a discussion. Do we add in 3 on-street parking spaces? Or is it 4 on street parking spaces? Do we jiggle that number a little bit and then multiply it by 4. We will leave out the question about whether there is going to be any litigation between these parties. We are not Grafton County Superior Court. We are the Planning Board. We approve the project if it meets site plan review and land use plan regulations. Hettinger said he concurred with Robinson's opinion.

Lahout said he did not know how long the parking spaces were.

Lahout shifted gears again. "We will continue this restaurant 'thing'. And just so the Planning Board knows that I do not want to waste your valuable time we should shift gears to a retail operation there. I want to go forward with the restaurant approval, but the retail use and the office use has been approved. I would like to continue the restaurant discussion, I think that the Planning Board has made some very good points. Let's continue to talk. Vice Chair Spanos asked if Lahout was withdrawing the application. Lahout stated, "No, I would like to continue. I'm just giving you an FYI so you don't kill yourself doing stuff that..."

Robinson asked Lahout if his original plan included parking just along one the side of the building. He did not remember that it went all the way around. Before you go full steam ahead, look at what we approved and what the plan was.

Lahout stated it was his plan with seven (7) spaces.

Vice Chair Spanos asked if anyone else wanted to speak. He asked for a motion to continue the hearing at the next meeting in September

Attorney Malia recommended that the Planning Board leave the public hearing open to take more public comment at the date of the next meeting. Bont informed the Planning Board that they would only have three (3) members on September 10th and September 24th is the cell tower.

Planning Board members wondered how long the cell tower meeting would take. Attorney Malia stated that the engineering report had come back. The telecommunications facility “pretty much passed”.

Attorney Malia recommended that as part of their motion to continue that they should ask the applicant to submit a plan showing the location and size of the parking spaces. Robinson informed Lahout that if he wanted to pursue the restaurant, he would need to come back on the September 24th with a written plan, showing the location and size of the parking spaces.

Lahout thanked the Planning Board for what he said that was a good discussion.

Town Manager Burbank attempted to clarify the extent of the approval. Burbank understood that the approval was for seven (7) spots which were not painted then. At a previous hearing the Planning Board was okay with seven (7) parking spaces which were not painted because they had heard through someone that was here tonight and the Planning Board saw a picture of a truck parked in one of the spots that was at the edge of the property line. The Board understood that seven (7) spots were marked out at two hundred (200) square feet per parking spot. Vice Chair Spanos expressed his opinion that the Planning Board had already approved that.

Lahout said that the parking spaces on his lot were “grandfathered” parking spots. Lahout said that if the application was to open a retail store that it would have been approved immediately because there was a retail store there previously. Lahout asked Town Manager Burbank why he was bringing this issue up now. Town Manager Burbank stated he wanted to be clear for enforcement purposes.

Lahout asked Attorney Malia if the Planning Board could revisit this decision once it already has been made. Attorney Malia explained that the issue is “for restaurant space provided the building be reconfigured for sufficient parking”. Lahout said that “these gentlemen now are talking retail past approvals”.

Robinson said that Lahout had shown to the Planning Board a plan showing seven (7) parking spaces. Robinson quoted regulations that the spaces must be two hundred (200) square feet each. Robinson stated that the Planning Board did not measure the parking spaces nor did the Planning Board measure the building or plot lines. Robinson asked Lahout if the seven (7) original parking spaces were two hundred (200) square feet each.

Lahout did not think they were. Lahout stated that “this is when I’d like to play my on-street parking card.” Strickon asked Lahout if he could re-measure the parking spaces.

Lahout then said, “But I want to be grandfathered for square footage used. Say I can only draw four (4) parking spots. It is not going to affect my retail operation because that is a grandfathered use. And that is when the on-street parking comes in.”

Robinson stated that Lahout would need seven (7) spaces on the site. Lahout stated that the current parking spaces drawn on the new pavement are substandard. Lahout worried that making them two hundred (200) square feet could affect the grandfathered square footage.

Callum Grant pointed out that the Pinestead Quilt building was a retail store, but Bill & Bob’s was on a separate lot. “How can Lahout say they are grandfathered now?”

Lahout said that the lots have been merged so both sets of rights go with the lots. Attorney Malia asked Lahout if he was still referring to restaurant use. Lahout stated, “No, we are talking about retail use.”

Attorney Malia then said the meeting had gotten off track on the retail use. The purpose of tonight’s hearing and the September hearing is restaurant use. The Planning Board wants the applicant to provide the Planning Board with a plan showing however many two hundred (200) square foot parking spaces Lahout thinks he can fit on the lot for a restaurant. Then the Planning Board will consider, if the Planning Board deems it appropriate, how many off-site parking spaces to give Lahout in addition to the spots on the lot. Malia explained that is what the Planning Board is asking Lahout to provide the Planning Board with before the September 24th meeting.

Samaha agreed that after reading the Notice of Decision which is dated May 20th, 2014, the notice does say the Planning Board has approved the applicants building for retail office space as proposed. Vice Chair Spanos agreed, but added that it was approved with seven (7) parking spaces that were be two hundred (200) square feet each.

Attorney Samaha asked if the Notice of Decision had specified any conditions. Vice Chair Spanos stated that the seven (7) parking spaces must be two hundred (200) square feet each.

Attorney Samaha asked if it said in the approval that the spaces had to be two hundred (200) square feet each. Vice Chair Spanos stated that regulations call for two hundred (200) square feet per space.

Attorney Malia said that Attorney Samaha’s position is that if the Planning Board approves this configuration of the site for retail, and if these seven (7) spots showed on this plan are not two hundred (200) square feet each, you have implied that you granted a waiver from the two hundred (200) square foot parking space requirement just as far as retail is concerned. Because you approved this plan showing these seven (7) spots.

Bont said the Planning Board members originally recommended that Lahout hire an engineer to put the parking spaces on the plan, but Lahout did not want to do that.

Strickon stated some of the parking spaces were questioned when they first received the plan. Attorney Samaha said that the retail space was already approved. Attorney Samaha said that the Planning Board could not go back.

Town Manager Burbank stated that the parking was approved based on the regulations. Town Manager Burbank stated that in the past looking at other approvals in this town the Planning Board does not usually spell out the two hundred (200) square feet regulation in the Notice of Decision. Town Manager Burbank explained that the approval is based on seven (7) parking spaces meeting regulations.

Attorney Malia said that Attorney Samaha was referring to the Notice of Decision that has the conditions of approval. On page 2, not the top three but the next set, number 1 says: “for retail / office space as proposed”. Provided Lahout provides the items set forth in items 1 through 3 above, which was supposed to be done within two weeks of March 26th, 2014. Provided Lahout provides these three items up top, then these other four (4) conditions kick in. Number one is that it is approved for retail/office space as proposed. If this is the proposal, then were those seven (7) spots approved regardless of whether or not they are two hundred (200) square feet. For retail purposes only, not the restaurant.

Vice Chair Spanos asked for the motion to continue and to postpone this hearing until September 27th, 2014. Lahout asked if it could go on record that the 7 parking spaces were approved regardless of size.

Vice Chair Spanos asked if anyone had an issue if the spaces were not ten feet by 20’ (10’ x 20’). Hettinger stated that as long as they are on private land he was not going to make an issue of it.

Attorney Burdin asked, did Lahout meet the requirements #1, 2 and 3 within two weeks of May 20th, 2014? Lahout indicated that he did not get the Notice of Decision until May 20th.

Attorney Malia stated that regardless of when they were submitted, they had been submitted.

- Condition #1 is plan views of all buildings either existing or proposed with their use size location and floor elevation indicated. Bont told the Planning Board members that the drawings and the notes on the plan that were submitted are in their packet. It is a hand drawn plan.
- Condition #2 is a typical elevation view of all the existing and proposed buildings indicating their height and signing.
- Condition #3 is the size and location of existing of both public and private utility connections including provisions for fire protection. Lahout said he talked to Bill Willey and drew the sewer line on the plan to show the location of the fire hydrant. Attorney Malia said that Attorney Malia said that usually he needs to see more professional plans and drawings from HE Bergeron or a licensed engineer showing exact distances and locations, but if the hand drawn plan is satisfactory to the Planning Board then OK.

Those three conditions have been met. We are not going to get hung up on the timing, because it sounds like there is a timing issue. Those three conditions have been satisfied and we are now dealing with the restaurant.

Attorney Malia then stated, “We agree that the seven (7) parking spaces shown on this plan are the seven (7) spots for the retail use. Now we are continuing the restaurant portion of the application to September 24, 2014. We are asking the applicant to provide us with a plan showing spaces for the restaurant that meet the 200 square foot requirement.”

Attorney Burdin said that the timing of these filings may be crucial to Mr. Rodgers in terms of his thirty (30) day appeal period. Because the final approval is not going to enter until all three of those conditions are met. Do we have dates when those were filed, is it today?

Attorney Malia asked Bont when these three things came in? Bont said she had printed out and given Ray Sabourn copies of emails that she had of communications she had with Lahout over time, however, she did not have time to read them. She said that Lahout provided them maybe in May or the end of May.

Attorney Burdin asked if the Planning Board had received any of the documents from Lahout today? Bont replied no.

Attorney Burdin said that in the meeting minutes for July 23 the applicant admitted he did not supply the Lincoln Planning Board

necessary documents. So it could not have been May. Attorney Burdin's recollection is that Lahout had not supplied the three items. Lahout then talked with Burdin about the meeting minutes and his memory. Vice Chair Spanos stopped Lahout and asked Lahout not to cross examine Burdin and to direct his questions and statements to the Planning Board.

Attorney Malia said they were talking about the restaurant in July. He was operating under the assumption that conditions #1 2 and 3 had long been met. These have been in for several months. Bont responded that she thought they were looking for the plans for the parking for the restaurant.

Attorney Malia asked Attorney Burdin about the Sabourn and Tower letter he submitted. Attorney Burdin said he submitted a letter from Roy Sabourn talking about the deficiencies in the application itself and a letter from Mr. Aylward who ran Bill and Bobs Famous Beef House where he talked about his paying the monthly fee for his right to use the parking and gain access to the parking in front of Bill & Bobs from the predecessor. There was never an easement it was not the course of conduct. Attorney Malia assured Attorney Burdin that the Planning Board and he would have a chance to review the letter from Roy Sabourn between now and the September meeting.

Motion to continue this hearing until September 24th, 2014: Applicant to submit a plan showing the location and size of the parking spaces.

Motion: Vice Chair Spanos Second: John Hettinger

All in favor: (4-0)

IV. NEW BUSINESS

A. Conceptual: One Love Brewery

- a. **Conceptual: One Love Brewery:** Michael Snyder and Jennifer Riley of Dover, NH, principals in One Love Brewery would like to discuss the possibility of renovating operating a brewery/pub in the
- b. 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, in the former Fratello's Italian Restaurant. The property is located in the Village Center District.

Michael Snyder is currently in a partnership in another brewery in Dover, New Hampshire called Seventh Settlements. In 1623 the area was the 7th settlement in America. As part of the branding Snyder has a separate brand called "One Love Brewery" where they promote the outdoors and the outdoors is just what Lincoln exemplifies. It is Snyder's intention to relocate to the Lincoln area. Snyder's plan is to take the concept of a brew pub into the Fratello's building here in Lincoln.

Town Manager Burbank toured the Fratello's facility with Snyder and listened to the concept and suggested that Snyder come before the Planning Board for a conceptual to hear any other concerns the Planning Board may have and to get a sense of the pulse of the town to see whether or not this business will be welcomed into the community.

Snyder then mentioned he had approached the Fire Chief as well and invited the Fire Chief to tour the Fratello's building. Snyder felt that getting the Fire Department on board early was a crucial part of creating a restaurant. Snyder then invited anyone from the Planning Board to come down for a tour. The facility has been a restaurant for a number of years. It has been sitting vacant for over three (3) years. Snyder described it as 'distressed' and 'in need of love'. Snyder hoped to provide anchor to Main Street downtown as another destination place and mid-range restaurant. Snyder's intent was not to bring an upscale restaurant into Lincoln because he felt it would not fit. Snyder explained that a mid-range restaurant is the kind of place employees are wearing jeans and

t-shirts. It is a place where you can relax after skiing and have a good meal. Snyder intended it would be a family oriented restaurant.

Hettinger asked if there would be any brewing there and if so, what size tanks would be in the brewery.

Snyder said they would brew there. Snyder envisioned a fifteen (15) barrel system but that part of the operation was not quite to the planning stages yet. Snyder would consider the brewing to be Phase 2. The restaurant would be the initial phase. To renovate this property and to get restaurant equipment would be a large financial burden for Snyder. There are actually two (2) kitchens in the facility: a front kitchen that made salads and a pizza oven. Snyder explained that front kitchen will be reconfigured to be the main kitchen. What is currently the main kitchen which is oversized will become a small brew house. Snyder stated that at startup he intended to make a small tap house with approximately eight (8) to twelve (12) beers on tap, while they outfit the back brewery. Snyder explained that he has been doing this for twenty (20) years, Snyder went to school for this and his specialty is resurrecting distressed buildings and breweries.

Hettinger asked if the brewery is going to have a mash tub. Snyder stated it would have a mash tub and explained that it is going to be an all mash system. Snyder does not believe in extract brewing.

Hettinger mentioned that a mash house can create an odor and asked if the mash house will have an odor scrubber on it. Snyder said that smell was nice and referred to it as the smell of a bakery. Hettinger said that to Snyder it smells good, but to some people it does not. Hettinger explained that he has worked in a fermentation operation and knew about that odor. Snyder did not think that fermentation developed an odor at all. Snyder said fermentation developed CO₂ which then goes down into a bucket of sanitizer. Hettinger explained that it was just the cooking of the mash that creates the odor. Snyder said it was more of a porridge smell. Snyder suggested that the Planning Board check out Woodstock Station, when they are busy brewing to get a sense of the smell. It's a molasses porridge smell. Snyder's plan is to utilize a stack (chimney) that is existing. Snyder hoped that the existing stack was used for the grease traps so another hole in the roof would not be necessary. The stack will be well above the odor line and the wind will take the smell away.

Belanger asked what the hours of operation would be for the restaurant. Snyder stated that they had not talked about hours yet, but felt it would not be a late night operation. Snyder felt that there were other businesses in the area that could handle the late night crowd and that 11:30 p.m. or midnight might be a closing time that would be considered but that would also be a seasonal dependency.

Town Manager Burbank asked about music, if it would be a band, piano or guitar. Snyder stressed it will not be a night club. Music on the inside will be catered, with the option of a small band outside on the deck if that is seasonable. Snyder felt that entertainment draws a lot of people in and that there are very few venues for that in this town.

Town Manager Burbank asked Snyder to talk about the expanded outside patio. Snyder stated that currently there is a concrete patio in the front with a very large overgrown spruce tree and scrub brush. Snyder wants to rip out the scrub brush and add a simple elegant rot iron fence 50 feet round and have a flower garden very much like the garden at Woodstock Station. Snyder asked if the Planning Board had seen the Woodstock Station garden and everyone agreed they had. Snyder felt that customers would want to have lunch outside in a formal garden atmosphere.

Town Manager Burbank asked to visually describe the location of the patio as you walk in. The patio would be 15 feet off the walkway and there would still be space between the gazebo and the fence. It would extend out into the grassy area in front. Snyder added that there will be tables out in the grass area itself so all customers would not be sitting on concrete, they would have the choice. Customers would be in a garden.

Vice Chair Spanos asked Town Manager Burbank if he felt that the Fire Chief would have any problems. Town Manager Burbank said this was a beautiful idea. The Fire Chief had a few concerns and they are being addressed. There was a question about loading for the kitchen, but until the plans for the work are seen it is hard to tell. Town Manager/Town Planner Burbank said the restaurant would be a huge undertaking, but exciting and good for the community.

Grant asked what Snyder's timeframe was. Snyder reconfirmed that it is a huge undertaking but the project is more than 60% financed to begin Phase 1 in about 2 months. For demolition, carpeting needs to be ripped out. Snyder offered the Planning Board tours to see the current condition of the interior. Snyder said the interior was awkward, segregated, and exclusive. Snyder's idea is to be inclusive. The plan is to open it up, and take out the strange planter walls. The plan is to keep it in the spirit of the mill with wood and brick.

Strickon mentioned that Snyder would be putting it back the way it was before Fratello's moved in. Snyder did not know that for sure, but stated that he would try to fix a lot of the "eye sores". To keep the integrity of the mill would be the first priority. The Seventh Settlement brewery is in an old mill building with a lot of wood and brick and Snyder fought really hard to keep that integrity. The old Fratello's building does need a face lift. The building needs painting badly. The original beams and some of the old archaic gear work are the pinnacle of its beauty. When Fratello's moved out they gutted the place. They took everything. They took all the pipes, they took anything that was worth over 10 cents. So there is nothing there. We have to figure out where all the wires and pipes go and what goes where.

Town Manager Burbank had seen the building inside and stated that some of the wires are cut off on the ceiling. Town Manager Burbank said it was sad.

Snyder added that they have plenty of parking.

Bont asked the Planning Board if the restaurant with the brewery qualified as manufacturing. Vice Chair Spanos gave his opinion as "no". Spanos believes it as re-conception of an existing restaurant. Town Manager Burbank said checking about the cooking process of the beer may give a definitive answer on the manufacturing question. Hettinger said that someone would have to check with the alcohol bureau in New Hampshire.

Snyder stated that the gentleman's name is James Barbuti of the New Hampshire Liquor Commission Auditing Department. The new business would have to be licensed through the NHLC office and at TTB (Alcohol and Tobacco Tax and Trade Bureau) on a federal level. Snyder assured the Planning Board that no fermented beverages would be produced without those permits.

Hettinger asked if all liquor produced will be consumed there, or would some be bottled or canned. Snyder stated that initially growlers-to-go, which are half gallon containers, will be offered. All brewed liquor will be offered in glass and stainless steel so customers can take them on the river. The plan is to have a large sign stating "Don't Take Glass on the River". Snyder added that when he is on the Saco River in Maine, most refuse is bottles and it is a problem. By law the business will be allowed to sell kegs either self-distribute or use a distributor. That is a definite possibility

down the road, but that will not be the primary business. That would be to help supplement our marketing and promotion, because the business will lose money selling kegs but the business will gain reputation in other areas. For now they will only keg the beer. Bottling is a \$75,000 endeavor, but Snyder can't say no because it could happen in 3 to 5 years.

Hettinger reconfirmed that the business would only sell kegs and growlers.

Town Manager Burbank said that the primary purpose is a restaurant/pub that will be supplemented by a brewery.

Snyder added that when the business starts sealing kegs, the "cooperage" – the keg itself – is \$125 each to which we add a \$30 deposit and you don't see those kegs again. Snyder said that it would be financial suicide for a small brewery to lose so much money on kegs, but confirmed there were other resources available. There are keg rental facilities where you pay a huge premium and you are still going to lose your kegs. Snyder said that it was a very tricky line to walk for inventory management to get the steel back. "It's not as easy as it sounds because kegs disappear all the time."

Bont wanted to give a heads up to Snyder that if in the rebuilding of Fratello's process Snyder required any water or sewer hookups, or if he was adding any sinks or restrooms, that there would be sewer and water tap fees involved. Snyder stated that he would be adding everything because the previous tenants removed everything.

Ron Beard assured the Planning Board that he had given a copy of the last permit that was given to Fratello's to Snyder so he could see how many seats he current was allowed. Based on the last facility they were allowed four hundred thirty-seven (437) person capacity including employees.

Snyder stated that the restaurant was broken down within sections. Snyder intends to eliminate those sections and in the process he will gain in some areas and lose in some areas. Snyder was unclear about how many seats he would have when finished. Bont told Snyder that the town only needed to know if he exceeds the four hundred thirty-seven (437) figure and Snyder said that was a very large number.

Bont was not worried unless Snyder was going to exceed the number because there would be water and sewer tap fees associated with the overage. Bont wanted Snyder to know so that it would not come as a big surprise later.

Snyder explained the plan to expand the kitchen and make it bigger. Snyder felt that owners tend to be table greedy and said that extending that kitchen would help to properly service the guests. Snyder made this point because expanding the kitchen will take away some of the seating, but he felt it was worth it.

Robinson believed that it should be noted if Snyder wants to expand to the outside beyond what is there now, a fence and putting in grass, that is beyond changes made by Fratello's. Although Robinson liked the idea and would encourage the outside addition that would change the use of that lot and would require a site plan review.

Snyder determined that changing the outside was going to be the first phase because that change would require going to the federal government for approval. If Snyder waited to make the outside change next year, that would require going back to the federal government to resubmit and that was not an option. Snyder was positive that it would be done only once to say "this is my size here" and that is it.

Vice Chair Spanos asked if local approval was required before you can get government approval. Snyder stated “no”, after building this site out the State will approve or disapprove that site. The government won’t care, all Snyder will say to the State is, “this is my site and it encompasses this area, here is my site map. Snyder told the Planning Board that the State will ask if “their beer” is secure for tax reasons. The State will want to know if there are locks on the doors. But if it was not fenced and was an open area, then customers can keep on walking to the gazebo which is not a licensed area to consume alcohol. A perimeter needs to be made so there is no question.

Town Manager Burbank stated that the town will work closely with the state to explain the site plan review process. Snyder needs to “move that to the front burner” to get it scheduled in a timely manner for site plan review on the outside seating. Snyder should stay in touch with Carole Bont, get the papers signed and get scheduled for site plan review.

Velma Gagne loves the idea of a new restaurant in town but was concerned about the hops smell. Velma Gagne stated that the Woodstock Station smell is awful and she cannot go in there. Other members of the Planning Board told Velma that it was not the hops smell in that back hallway, but more of a musty odor from the old carpets and wood of the old building.

Snyder was a little confused because the odor should not be that low in the building. Snyder plans to put a stack in that will exhaust the smell above the building roofline. Snyder also confirmed that the smell at the Woodstock Station is not coming from the brewing process. Snyder did state that the Fratello’s building is awkward for the business he intends in that he would like to have the brew process more opened so customers could see the brewing process, however it is not likely to happen. The brew process will be behind glass doors, but not out in the opened.

Snyder thanked the Planning Board.

OJ Robinson was excused for the complaint about Alpine Adventures.

- c. **Complaint re: Site Plan Approval for Alpine Adventures:** Donna Thompson, David Thompson, Patrick F. Gagne and Velma J. Gagne, filed a letter of complaint with the Planning Board about the unsightly and noisy thrill Airbag Ride at the Alpine Adventures built in the middle of a residential neighborhood in their immediate backyard that operates between the hours of 10 am to 6 pm. They are complaining again that they and the abutters were **not** notified or informed at the hearing about the full extent of the “ride” and its noise implications. Map 112, Lots 052, 053 & 054.

Vice Chair Spanos read the complaint.

Donna Thompson has written letters of complaint to the Planning Board and called Jeff Woodward about the noise at Alpine Adventures. The noise does not come from the entire facility, but mostly from the slide and its landing pad located directly behind the Thompson home. When the slide went up and Thompson complained to the Alpine Adventures about the noise, Thompson was told that to argue this issue she would have to go to Grafton County Supreme Court because the Planning Board had already approved the slide. Although the Thompsons are abutters to the Alpine Adventures, they did not receive notification that the slide was being built and had no recourse.

Vice Chair Spanos asked who told Thompson to go to the Grafton County Supreme Court.

Thompson stated it was Matt Henry in the Planning Office. Thompson stated that Town Manager Burbank came to Thompson's residence to hear the noise first hand.

Town Manager Burbank stated that the original plan for this one structure started off as a ramp and warped into a slide with inner tubes. The structure appears to be larger than what originally was approved. Burbank said that from an enforcement standpoint, the Thompsons should come in and talk to the Planning Board to see if the Planning Board has any recollections or input because it truly is an enforcement issue. When Carole Bont and Town Manager Burbank researched the plans for this "ride" they found hand drawings of the original concept and also a plan that was in the file showing a landing mat, even the structure appears to be in the setback. There are no measurements on the drawing. There are enough complaints and other issues that Burbank felt that the Planning Board should be made aware. Burbank spent twenty (20) minutes on the Thompsons porch talking and every two minutes, "whoosh, scream, bang". Issues have been identified. Whether those issues can be revisited was unclear. Burbank felt that with two or three years of complaints, this issue should be looked at by the Planning Board.

David Thompson said that the abutters were not notified when this slide was built. Thompson said he was not treated fairly by the Planning Board Administrator when this project first started and Alpine Adventures was being built. The owner of Alpine Adventures never told the abutters when he was building new items. Before the abutters were fully aware of what was being built, it was completed. Now there is no privacy in the abutter's yards and the noise level is high. Thompson stated that he tried to pay attention and come to every Planning Board meeting, but many meetings the abutters were not notified about, or that Alpine Adventures built items that did not require Planning Board permission.

James Champagne is an abutter in the back on 28 West Street. Champagne stated that he attended many of the meetings to approve the Alpine Adventures building, but confirmed that there was never a slide that was part of the initial rope course. Champagne also complained that there was no notification sent to abutters when the slide was built.

Velma Gagne also stated she and her husband did not receive notification of the building of the slide at Alpine Adventures and that as abutters they should have been told. Gagne stated that there is at least one young man who works at Alpine Adventures encourages the customers to scream louder. Gagne witnessed this employee of Alpine Adventures telling the customers to scream and then encourages them with a "good job" or "keep it up" to get them to scream more. Gagne did not feel that abutters and tax payers should have to put up with this noise. Gagne also wanted to note that this is a residential area.

Hettinger recalled someone complaining about this several years ago. Hettinger said that Mr. Farwell (the owner at the time) talked to his employees and asked them to stop with the yelling and screaming.

Donna Thompson stated that she would rather have a cell tower in her yard because cell towers do not make noise. Thompson also stated that she tried in the past to talk to Mr. Farwell and was unsuccessful, however, more recently she had a talk with Jeff Woodward. Although after the talk things did quiet down for a few days, it only takes two days for it to get very noisy again. Every time the Thompsons complain the noise seems to be worse.

Attorney Malia pointed out to the Planning Board that in their packets there are Planning Board minutes from December 14, 2011. It looked like the only two members now that were on the board then were Jim Spanos and John Hettinger. On page 2 at the bottom it states that Alpine Adventures

came in for a request to waive site plan review regulations. That request was approved, so a public hearing was not required. That explains why no abutters were notified, because there was no public hearing. There is also a building permit that was issued that was in the packet, and that building permit has some requirements. One of which is that all construction be in accordance with all local regulations and ordinances. If what they built was not in compliance with the building permit or if what was built was not in compliance with what they submitted to you back in December of 2011 which caused the Planning Board to believe that the site plan review was not required, then the town could pursue an enforcement action. That would not be handled by the Planning Board. It would be handled by the Selectmen's office. That is an option the town could look into.

Town Manager Burbank said that based on what was being said at this meeting confirmed that this is definitely an enforcement issue.

Strickon stated that she spoke with Mr. Farwell and noted that Mr. Farwell assured Strickon that the bell would stop ringing and other noise would be shut off at 5:00pm.

Velma Gagne stated that Alpine Adventure cannot change the noise that customers make when using the slide. One ticket for the slide gives each customer three (3) rides which means they scream three (3) times per customer. Velma Gagne noted that her husband Frank Gagne had to take his hearing aids out because the volume of screaming was too loud for Mr. Gagne.

Attorney Malia advised the abutters that they may consider hiring a lawyer. Attorney Malia suggested that a lawyer might be able to do some things that the town cannot do. For example, a nuisance claim is something a municipality cannot bring, but abutters could bring as individuals. Town Manager Burbank is going to look into the noise.

Champagne said that it sounded like some of the items at Alpine Adventure were improved without neighbors being notified. Champagne was not sure if that was a normal process and felt that the neighbors should have been consulted. Champagne also offered that the land the ramp was located on was residential, not commercial.

Town Manager Burbank offered to take a look at the location of the slide and other structures that were on the lot.

Champagne agreed that he would not want to have the slide in his back yard. Champagne also did not think that if the neighbors had been notified, the slide would have been approved. Champagne did not understand how some things can get added on when it did not seem like they went through the same process with the town for approval.

Woodward mentioned that Mr. Farwell is not the owner anymore. Whales Tale bought the property just over a year ago on August 8, 2013. Woodward stated that it is a big company now with both attractions. One of the cornerstones of Alpine Adventures is to be good neighbors in the community. Since the screaming is not wanted by the community Alpine Adventures is trying to mitigate it as best as they can. Woodward stated that the property was purchased based on revenue, and if the slide was not part of that revenue it would be taken down, but it is part of the revenue so Woodward is trying to work with it and make it more quiet or run it at specific hours. It is more complicated than just the slide because Alpine Adventures was purchased based on what was operating at that time. Woodward did run some numbers to see how many people go down the slide in the course of a season so they can track it.

Hettinger stated that what these people are saying is that it was not only the hollering and hooting but the sound of landing on the “pad” that makes noise too. Hettinger stated that when they talked to Mr. Farwell, he confirmed that the ride would not make any noise. When he said it was a slide and no noise is made, they tended to believe him. So not until the ride was approved and up and running did they find out that there is noise associated with the ride and the neighbors are upset.

Woodward confirmed that they had numbers of how often the slide is used during the day. Woodward stated that Alpine Adventures does not intend to operate in the winter. Snowboards and skis are not allowed because of high risk for injury. Woodward felt that using snowboards and skis on the slide would generate a different type of crowd than with the inner tubes they use today. With inner tubes the ride attracts more families and younger kids. Woodward said that Alpine Adventures was trying to do the right thing and has been operating there for several years.

Robinson quoted that between Memorial Day and August 26th, 2014, 8000 individual riders went down the slide. That averages out to be about eighty-four (84) slides per day. Robinson stated that some people don't make a screaming noise. That equates to ten (10) minutes of screaming noise a day. Robinson said that the noise was far less than the lawn mowers in the neighborhood and the motorcycles going by on Main Street.

Strickon stated that she sat outside of the Thompson home in her car one day to hear the noise first hand. Strickon felt that the noise coming from Alpine Adventures was more annoying than the motorcycles on Main Street.

Thompson wanted the Planning Board to know that when Mr. Thompson bought his home it was a residential neighborhood and not an amusement park.

Strickon said that it is an annoying sound. Strickon felt that people grow up learning to listen to motorcycles and engines, but the frequency and pitch of the screaming is completely different.

Robinson and Woodward repeated that they are trying to be good neighbors and keep the noise level as low as possible but that customers will scream when they go on rides and the employees of Alpine Adventures do not have any control over the screaming.

Vice Chair Spanos asked when Alpine Adventures closes for the season. Woodward stated that Alpine Adventures closes in October but that business is down in September and October.

Donna Thompson mentioned that she does not spend as much time in her yard in the winter and that it was the summer months that she wanted the quiet.

Champagne said that this is going to be a financial burden on either the Alpine Adventures or the neighbors. Alpine Adventures if the enforcement is to stop using the slide and the neighbors on the cost of the abutting homes. Champagne said that no one would purchase a home that close to a loud amusement park. Champagne feels that in the beginning this slide never should have been approved and then neither party would be having these problems.

Velma Gagne stated that her family no longer has family reunions at her home because of the noise from the Alpine Adventures slide. Gagne also mentioned that they no longer can use their deck for breakfast and dinner, or have cookouts. Gagne no longer uses the family's picnic table because of the noise from Alpine Adventures. Gagne offered for the Alpine Adventure owners to come and sit in her backyard and listen, but not for 10 minutes, it goes on all day for 5 hours.

Attorney Malia said this case was a good lesson for the Planning Board. Whenever anybody comes to the Planning Board for a conceptual if there is any potential for a significant impact on the abutters err on the side of caution and schedule a public hearing. For better or for worse back on December of 2011 the Planning Board felt like this was a minor change to an already existing adventure park and they decided a public hearing was not necessary. That was the decision made back in December of 2011. The Planning Board cannot go back to 2011 and change that. They cannot schedule it for a public hearing now. What is done is done as far as the Planning Board is concerned. This matter is really no longer in the Planning Boards jurisdiction. Although this was a good discussion tonight, it was good for the abutters to say what they needed to say and good for the owners to hear what they said. It is also good for the Town Manager to hear as well because now he is going to look into it. The Town Manager does have jurisdiction but he is pretty much limited to the building permit that was issued and whether or not what was actually built complies or in some way violates the building permit that was issued. At this point the town should turn it over to the town manager who will take a look at the building permit.

Woodward stated that as the Alpine Adventures business grows if the owners decide that the slide is no longer needed, or if they can put something else in that place that may not make as much noise, they will try to do that. But for right now, the slide is there and works well for the park. The owners of Alpine Adventures will continue to work with the abutters to alleviate the noise.

Town Manager Burbank stated that he is going to look at the paperwork trail of the original building of the Alpine Adventures Park and compare it to what is there today. Burbank stated that he may want to talk more with the abutters and the owners of the park. Burbank will try to find out what the Planning Board was led to believe was going to be built where the slide is today. Burbank is governed by the conditions that were put on the original building permit. Burbank stated that he would try to do his research before people leave for the winter.

Woodward said that if the owners of Alpine Adventures could eventually eliminate the slide, that then property values around that park would no longer be an issue.

Velma Gagne asked to confirm that she was on the abutters list. Since the Gagne's were not notified they may have been omitted from the list. Bont assured Velma Gagne that she would be notified if there were any further changes at the park.

Robinson returned to sit on the Planning Board.

Town Manager Burbank asked for clarification from the Planning Board on two issues.

1. The first issue of concern is a letter received from Loon Mountain. Copies of the letter were given to each Planning Board member. Loon Mountain is having an event called the O2X Summit Challenge on Friday, October 17, 2014 and Saturday, October 18, 2014. The participants will be staying overnight on Friday October 17, 2014.

The concern is that the participants will be camping in the gravel parking lot next to the river. The Planning Board rendered a decision **twelve years ago** concerning this event and if there were going to be any changes from the original event the Planning Board would need to re-visit this event. Town Manager Burbank stated that the concern for the town would be many tents along the river very close to the water intake for the town's water supply. Loon Mountain is planning to use portable toilets for this event and Town Manager Burbank said that Loon Mountain may be placing these toilets too far away from the campers. Town Manager Burbank said that if the portable toilets were brought any closer to the campers the toilets would then also be closer to the river which

caused a concern about the possibility of the portable toilets falling over or being pushed over. Town Manager Burbank has reservations about moving forward with this event based on the concentrated tent space in the riverside parking lot.

Strickon stated that at the Soulfest event held at Loon Mountain (now held at Gunstock) the tents were set up on the ski slopes Snubber and Sasparilla and in the parking lot and the portable toilets were placed along the road, giving the campers no reason to go down to the river.

Belanger stated that the Soulfest that was at Loon Mountain attracted thousands of people and did not think that the Loon Mountain anticipated that many people for the O2X Summit Challenge.

Town Manager Burbank stated that each 25 x 25 foot tent will hold 2 to 3 people. Town Manager Burbank assumed that could mean 500 campers in tents. The O2X Summit Challenge obtained an events permit from the Planning Board that was good year after year. The permit does read that if there is a substantial change to the event the event managers would have to come back to the Planning Board with a conceptual for the changes to make the town aware of any changes. It does say that if there is a substantial change they would have to come back for a new special event permit.

Hettinger stated that someone makes a trailer that has bathroom facility in it that cannot be tipped over. There was a general discussion between members of the Planning Board around different types of porta-potties and locations these could be placed to ensure the campers use them.

Robinson reminded the Planning Board that this goes back to an event approved by the Planning Board 12 years ago.

The Planning Board mentioned that over the past 12 years this may have transformed into a totally different event than the events that are happening this year.

Robinson asked the Planning Board members to look at the original approval that was for 593 sites. The sites were originally spread out over the mountain in different locations.

After a general discussion by the Planning Board members it was decided that the event planners for the O2X Summit Challenge need to come in to a Planning Board meeting to talk to the Planning Board about any changes that have occurred in the O2X Summit Challenge event. There were too many assumptions from the Planning Board to make changes without talking to the event planners for the O2X Summit Challenge. Once that meeting has taken place the Planning Board will be able to weigh the changes against the original site plan approval for the event.

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2. The second issue that Town Manager Burbank wanted to talk to the Planning Board about was curbing at The Pines at Forest Ridge.

Town Manager Burbank stated that the Land Use Plan Ordinance calls for curbing at intersections. At the Pines at Forest Ridge HEB Engineers, Inc. did a third party review on curbing. New Jefferson Holdings, LLC does not want curbing. HEB Engineers, Inc. report came back stating that it would be better if there was not curbing there because it allows for water to run off of impervious surfaces quicker. Town Manager Burbank stated that it was not a decision that should be made by Bont or himself and is asking the Planning Board to make a decision regarding curbing at The Pines at Forest Ridge.

Robinson asked to have Public Works Director Willey made aware of this issue. Town Manager Burbank said that although Public Works Director Willey was not notified about this specific issue Town Manager Burbank said that there would not be a problem because Public Works Director Willey did not like curbing because of the problems curbing causes with plowing and water runoff.

Motion to waive granite curbing at the Pines at Forest Ridge.

Motion: Paula Strickon Second: OJ Robinson

All in favor: (4-0)

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3. Brent Drouin stayed to talk to the Planning Board about parking in the Town of Lincoln. Drouin stated that it was not possible to “allocate” street-side parking to one specific business. Drouin said there are many businesses along Main Street that depend upon the street-side parking making it impossible to designate any street-side parking to any one business.

There was a general discussion with the Planning Board about street-side and municipal parking. Town Manager Burbank asked if Drouin felt that the businesses in the Town of Lincoln would support a parking garage. Drouin said that they would if it was done tastefully and was not an eyesore.

Town Manager Burbank and Drouin both said that the business owners in the Town of Lincoln should get together with the Planning Board and have an open discussion around parking and possible resolutions to the parking issues in the Town of Lincoln.

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- 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 9:22PM

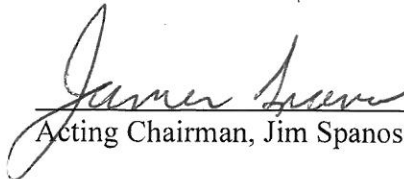
Motion: OJ Robinson Second: John Hettinger

All in Favor: (5-0)

Respectfully submitted,

Wendy Tanner, Planning and Zoning
Recorder

Dated: August 27, 2014



Acting Chairman, Jim Spanos