

COÖS COUNTY PLANNING BOARD
Lancaster, NH
July 15, 2015

Present from the Board: John Scarinza – Chair; Fred King – Vice Chair; Jennifer Fish – Clerk; Ed Mellett, Scott Rineer, Mike Waddell; alternates Tom McCue, Mark Frank; and Board Secretary Suzanne Collins.

Also in Attendance: Bernie Waugh, Esq.; David Norden, David Despres, Jeff Stevens, Dixville Capital, LLC; Steve LaFrance, Horizons Engineering; Tara Bamford, North Country Council; Commissioner Rick Samson; Becky Merrow, Colebrook Town Manager; David Brooks, Chair, Colebrook Planning Board; and members of the press.

John Scarinza, Chair, called the meeting to order at 6 PM.

APPROVAL OF MINUTES OF JULY 8, 2015:

Some members had not received a copy of the minutes yet. Mark Frank made a motion to table this agenda item until the next meeting. Fred King seconded the motion. There was no discussion. All board members voted in favor of tabling approval of the minutes of July 8, 2015.

OLD BUSINESS:

Pre-Application Conference with Dixville Capital, LLC:

Scott Rineer excused himself from any discussion on the Dixville Capital, LLC redevelopment project due to a potential conflict of interest.

John Scarinza explained that the purpose of these pre-application conferences is to provide for an informal discussion of aspects of a specific proposal. He emphasized that no decisions relative to the concept plan would be made at this meeting. The meeting is being held for a hashing of conceptual ideas between the developer and the Planning Board. This discussion, he stated, relates to broad concepts on the suitability of the developer's plans.

He advised Board members that for tonight's meeting and future meetings relative to this project, the Board will rely on:

1. New Hampshire State Statutes, especially relative to notification times and process;
2. Planning Board official documents;
3. The Planning Board in New Hampshire – A Guide for Local Officials;
4. Attorney Bernie Waugh – Planning Board representative for legal questions and guidance and writing of decisions; and
5. Tara Bamford – Planner, North Country Council.

John continued that many decisions will fall back on the Zoning Ordinances for the Unincorporated Places – lot sizes, buildings, open spaces, density of population, etc. Then, Site Plan Review will come into play regarding project elements such as drainage, roads, noise, lighting, public safety. The Board has the opportunity to recommend to the Commissioners and Delegation a Planned Development subdistrict under Section 4.07 of the Zoning Ordinances. Additionally, the Board has the discretion to grant certain waivers. For example, the ordinances specify building height standards but a waiver can be granted by adhering to performance standards in the fire code after consultation with the State Fire Marshal and the local Fire Department.

Fred King expressed concern regarding an article appearing today in the Colebrook News and Sentinel about tonight's meeting. John Scarinza noted that he had not spoken with Scott Tranchemontagne who serves in a Public Relations role for Dixville Capital. John urged Dixville Capital to be sure their media contacts are clear on the facts before commenting to the press about Planning Board meetings. David Norden agreed that Mr. Tranchemontagne did not represent the process of tonight's meeting correctly. Regarding Planning Board schedules, contact should be directed to John.

David Brooks expressed concern about the location of the Public Hearing on the concept plan application scheduled for August 18th. He did not think that the courtroom at the Colebrook Town Hall would accommodate the number of people expected to turn out for this hearing. Edith Tucker, Coos County Democrat, urged the Planning Board to post its meetings and locations on the county website. Jennifer stated that all meetings are posted on the website.

John Scarinza recognized David Norden who distributed a list of discussion points relative to the pre-application conference. He stated he has been working on the Balsams Project since 2014 and is representing Ed Brisson and Burt Mills who could not attend due to other obligations. Mr. Norden stated that the Concept Plan application is 90+% done and Dixville Capital's goal is to get a completed application as soon as possible. He introduced his team members Steve LaFrance from Horizons Engineering, David Despres, CFO; and Jeff Stevens, Construction Manager.

Regarding the legal process, Mr. Norden emphasized how important it is to Dixville Capital that state statutes are adhered to. Their investors expect due diligence in every aspect of compliance and he indicated that he appreciated Attorney Waugh's oversight on behalf of the Board.

Mr. Norden explained that Dixville Capital is looking to create a subdistrict and the developers also are requesting a set of separate standards and regulations that apply to this particular subdistrict that they would refer to as Development District – Balsams. For their investors, the developers need agreements that cannot be taken away over a number of years. It is critical to have vesting rights for years down the road.

Attorney Waugh noted that a project with Site Plan Review uses a combination of NH Statutes 674:39 (674:39 Five-Year Exemption whereby a site plan approved by the planning board and properly recorded in the registry of deeds is exempt from all subsequent changes in subdivision regulations, site plan review regulations, etc. for a period of 5 years after the date of approval); and 676:12. He continued that once an application is submitted to the extent that notices have gone out, then the 5-year statute kicks in. He cautioned, however, that substantial completion is slippery. The Planning Board can define what constitutes substantial completion. The type of vesting that comes under that depends on how the Development District is worded. A final development plan has to be presented within 18 months.

Fred King asked about development along the Golf Course that is located in Colebrook. Does the Colebrook portion of the project need to be included in the phased plan? Attorney Waugh replied that what happens in Colebrook needs to be approved by the Colebrook Planning Board separately.

Colebrook Town Manager Becky Merrow noted that a certain development in Eastman covered several communities. David Norden replied that the subdistrict Balsams is only in Dixville. He stated the Colebrook portion will adhere to Colebrook's zoning ordinances.

Mr. Norden stated that Phase I will include the Dix House and the Hampshire House and expects vesting time to begin when they submit the application until the final plan is submitted for this portion of the project. Then that phase is vested for 5 years. However, when that substantial completion is done, then that phase is vested forever. For the Dix House, Hampshire House, Gondola, the developers need a clear definition of what constitutes substantial completion.

Tara Bamford clarified that Attorney Waugh was talking about substantial completion of the site plan. The Concept Plan is different from site plan. The Concept Plan application is for a zoning map change.

Attorney Waugh explained that he has practiced municipal law for over 30 years. He tries not to get involved in policy decisions and respects the right of the Board itself to make decisions.

Mr. Norden requested clear guidelines in identifying vesting.

Mike Waddell asked if the plan is going to come in with everything in it, with the 25% being developed now and the 75% for later. Mr. Norden replied that the developer cannot bring it all in now due to future market demands and changes.

Mr. Norden continued that the developers are urging the Board, Commissioners and Delegation to agree to the following with items a-c vested:

- a. Approval of the Balsams Resort Concept Plan – a long term vision;

- b. With the approval of the Balsams Resort Concept Plan, then they will seek approval of the formation of the Development District – Balsams (a subdistrict with regulations and standards). The developers have prepared a draft of this special zoning district ordinance that will be part of the concept plan application.
- c. Adoption of the Development District – Balsams Subdistrict Land Use and Site Plan Review Standards.

He continued that next the developers are requesting:

- d. Issuance of a Concept Plan Permit after adoption of the subdistrict with criteria for vesting; and
- e. Approval of the Final Development Plan of the Hampshire House and Dix House renovation.

Once item e. is complete, that will initiate the project. In summary, Mr. Norden stated, there will be a new zone, a zone with standards, a clear definition of vesting, then approval to go forward with the Hampshire and Dix House renovations.

Attorney Waugh stated that the developers are looking for more than approval of a Concept Plan under Zoning Ordinance 4.07 but also a zoning amendment for the special subdistrict. He added that a development district can have regulations that are different.

Tara cautioned that there are 2 processes going on here – the process of creating a zoning subdistrict and site plan review.

Mr. Norden stated that they are not seeking to change the process for site plan review. They understand that they will need height waivers, waivers for dense urban areas along Lake Gloriette, etc.

John clarified that site plan will be more specific – drainage, lighting, etc. He stated that the changes being discussed relate more to zoning – lot size, building heights, density, etc.

Mr. Norden asked if the Board was comfortable with a concurrent path for the items outlined in items a-e of the desired outcomes for the Planned Development District application process. Tara replied that she has not seen these as different steps. She stated the developer would submit an application for a Concept Plan that would include all the components. The Board expectation is that they would get the new proposed standards in the Concept Plan application. Attorney Waugh stated that Planning Board final approval comes last but other pieces can be discussed concurrently. From the point of view of law, these can happen simultaneously. Tom McCue agreed that it is not unusual to have zoning and planning activity going on at the same time. He recognized that the developers have a window of time in which they can do certain components of construction. Mr. McCue asked Mr. Norden that when the developers reviewed the site plan regulations, were there areas that needed to be tweaked. Did the developers find regulations that were going to be issues?

Steve LaFrance replied that they could see some issues such as road lengths. He had no specific examples but there may be some items that will need special consideration. Attorney Waugh replied that the developer has the opportunity to request waivers and the Planning Board has the authority to grant waivers under its zoning ordinances.

Tara suggested that the Board could concurrently be reviewing and deciding on the Concept Plan for the Planned Development District, the remodeling of the Dix and Hampshire Houses, and Site Plan Review.

Mr. Norden asked for clarification on the different applications. He stated that they will submit an application for the subdistrict with a Concept Plan application and then apply for site plan review.

Tom McCue stated it would be helpful for Board members to see what the developers envision in the future. Mr. Norden replied that they have a vision for the Wilderness Ski Area, a vision for the Panorama Golf Course, and a vision for South Village. What is currently real in Phase I and furthest along in the planning stages is the Dix House, Hampshire House, another hotel called the Lake Gloriette House, the Balsams Baths, the Marketplace with a General Store and a fitness center. These are all located in the core area around the lake.

John Scarinza asked about the vision for South Village. How many housing units does the developer envision? For the entire project, where would dense development likely occur and where would the developer propose to locate conservation areas?

Becky Merrow inquired about the Shoreland Protection Act and Lake Gloriette. Mr. Norden replied that the developers already have opened a dialogue on this issue with the State.

Edith Tucker asked how the developers would weave in their new property owners in having a say in what happens at The Balsams. Mr. Norden replied that when they purchase the real estate, new owners will be provided with an offering Memorandum of Understanding approved by the NH Attorney General's office. Purchasers will know what the vision is for the resort going forward.

Mr. Norden stated that the draft application includes components dealing with food service establishments, dwelling units, outdoor recreation facilities and long term, perhaps medical and fire facilities.

The Concept Plan will include all the uses in each development area. It will designate the conservation areas. The developers will want approval of the ski area as it is paramount to the success of the entire plan. The developers are urging the Board to defer to all the permits granted by State and federal agencies. They are looking for the Board to approve the ski area as a whole with all those permits obtained with no additional permitting layered on top at the county level. The ski area plan is very advanced.

Fred King remarked that it makes sense that if the County says you can't build a ski area, you will pack up and go home. He noted that if the developers have all the state and federal permits, they can expect Planning Board approval of the ski area. Mr. Norden added that the developers expect that approval at the Concept Plan level. Mr. Norden stated that he expects that certain approvals will be conditional on developer's submission of certain permits.

Tara asked if the developers want to include the gondola and ski area in Phase I. Mr. Norden replied that they are looking to have the ski area as an allowable use in the Planned Development District – Balsams. All the permits will be submitted. Tom McCue asked if there will be site plan review for the ski area and Mr. Norden replied yes. Buildings like base lodges will need permits. The State and feds would approve ski lifts, snowmaking, etc.

John Scarinza stated that best management practices are critical and he suggested that the developer include some of those references in the application.

Steve LaFrance stated that for any project that requires an Alteration of Terrain Permit, the state comes periodically to check on erosion control. The AOT rules have specific guidelines and not much deviation is allowed. The State's greatest concern is erosion. This project will require a Storm Water Pollution Control plan. There has to be an inspector on site every time it rains. This is the greatest risk to down gradient abutters.

John advised the developers to cite the statutes that need to be followed. He stated that trams and ski lifts are inspected annually by the NH Department of Safety. Mr. Norden asked if the Board wants the developer to reference the agencies that will follow this development. John replied that the developer should cite the proper enforcement authorities.

Mike Waddell asked if parking, electrical, water distribution, etc. would be part of the site plan application. Mr. Norden replied that it would be. In response to Mike's question, Mr. Norden stated that if 5 years from now, the developer is ready to go forward with South Village, they would definitely come back to the Board for building permits and they would follow the newly adopted land use standards for the Balsams Development District. Mike asked if they envision build out of the ski area in 5 years. Mr. Norden stated that some of the ski area envisioned would probably never get built. Mike asked if they would identify what will most probably be built.

Mr. Norden stated that Phase I is significant. That phase will probably be larger than most New England ski areas.

Mark Frank asked about the ski back bridge over Route 26. Mr. Norden stated that getting to and from the ski area is critical. With a gondola taking skiers across the lake and highway, it is important to get back. The gondola can accomplish that but hard core skiers will take a ski trail traversing the mountain to a ski bridge over Route 26 back to the hotel. It will also provide access to the Table Rock hiking trail during non-ski season.

David Brooks suggested that the developer prepare site plan review applications for two different sites – one for the ski area and one for the hotel complex and then get substantial completion on each. He thought it might make it easier.

Mr. Norden stated that the site plan application will cover dimensional standards, lighting/signage, roadway standards, regional impacts and reliance on state and federal approvals for technical and environmental review. The developers will be seeking a waiver on lighting within the resort area but the lighting on Route 26 will adhere to the zoning ordinance. They will also propose their own signage regulations.

The internal roadways will be privately owned by the developer including Golf Links Road which will be conveyed by the State of NH to Dixville Capital. Becky Merrow stated that parts of Golf Links Road are in Colebrook and she asked if the State will be improving it. Mr. Norden replied that the NH Department of Transportation says it will improve the road prior to conveyance – at least on the Dixville portion. Mr. Norden indicated that they want it paved all the way through. Tara inquired if the Town has to be a party to that agreement in order to meet the 80%-20% financing requirement. John Scarinza stated that when the application gets a Public Hearing and regional impact is discussed by the Board, it will be the appropriate time to flush that out.

John stated that the Board will need the developer to meet the minimum requirements in the fire code. If not, perhaps the answer sprinkling the units. If the developer wants 14% grades on roads and non-complaint road widths, a proposal for the trade-offs will be required. If the Board approves private roads, the County will require rock solid waivers of liability to protect the County from having to take over these roads in the future.

Tom McCue stated that the Board has previously discussed dark sky standards.

Mr. Norden stated that the developers are currently drafting proposed standards and regulations and asked if Board members wanted to read these ahead. John advised that all proposals should be brought in as part of the application process. He urged the developers to come in with their best application which will be reviewed for completeness. If it is not complete, the Board will continue these discussions – a meeting can be continued to a future date certain. He repeated that the zoning district change and new zoning regulations have to go to the Board of Commissioners for approval and then to the Coos County Delegation. John added that site plan waivers are at the discretion of the Board.

Attorney Waugh stated that in terms of Site Plan Review, there is a time constraint in state law. If both the Concept Plan and Site Plan are submitted at the same time, there is a 65 day clock. The 65 day limitation can be waived until the Concept Plan zoning changes are decided by the Delegation.

John stated that existing buildings fall under the existing ordinance. Mr. Norden stated that they would need waivers on height.

Steve LaFrance stated that site plan review is months away.

John stated that in order to schedule a Public Hearing on August 18, the Concept Plan application must be received by August 3rd.

Mr. Norden stated that they will address regional impact and they will begin discussions with the Colebrook Planning Board. Edith Tucker added that regional impact should encompass both Millsfield and Errol and John replied that it was the Board's intent to include them and also have a discussion about the extent of regional impact.

Mr. Norden flipped through exhibits that will be part of the application. In accordance with Section 4.07, the proposed Development District – Balsams map will delineate any existing protected districts. Existing conditions on the property will be described as will any property ownerships internal to the property owned by others. The application will include a soils map and show the architectural character of the buildings.

John asked Mr. Norden to provide 20 copies of the Concept Plan application. Steve LaFrance indicated that all the information could also be provided in digital format.

John emphasized that the next meeting scheduled for July 29 is not a Public Hearing on the application. The goal is to have a complete application by August 18th.

Mike Waddell stated that he would also request what the developer plans to do in regard to municipal services such as solid waste removal, etc.

John indicated that as part of the Concept Plan application, the developer must provide general statements on financing as well as a clear understanding of who constitutes Dixville Capital, LLC. Mr. Norden stated that they will provide letters of authorization from the existing landowners. Dixville Capital currently holds exclusive options to purchase the properties but they will not exercise those options until they know they will get all the desired permits from the State.

Tara questioned the transfer of a Concept Plan from one owner to another. Mr. Norden stated that they will make a formal request for authorization to do this.

Mr. Norden asked if the developers could consult with Attorney Waugh or Tara Bamford. John replied that all questions should come through him. Attorney Waugh stated that the Planning Board is his client and he must insist that the attorney-client privilege is preserved. John stated that he had met with the Coos County Commissioners and received approval for these legal and planning services. He informed Mr. Norden that the Board will need a letter of understanding from Dixville Capital that these costs will be reimbursed. Mr. Norden replied that he has the letter.

Attorney Waugh asked if the application will contain all the language for the proposed zoning change. Mr. Norden replied that it will and that the language will be drafted and presented in the same format/style as the current zoning ordinance.

RATIFICATION OF BUILDING PERMIT:

John Scarinza stated he had reviewed a building permit application submitted by Brian Mercier for a 12 x 16 foot shed in Millsfield. He stated that all setback requirements have been met.

Fred King made a motion to ratify Building Permit #446 for a 12'x16' shed in Millsfield. Ed Mellett seconded the motion. There being no further discussion, all members vote in favor of approval.

DATE AND TIME OF NEXT MEETING:

July 29, 2015, 6 PM, North Country Resource Center, Lancaster.

ADJOURNMENT:

Mike Waddell made a motion to adjourn. Mark Frank seconded the motion and all voted yes.

Respectfully submitted,

Suzanne L. Collins
Secretary to the Planning Board