

COÖS COUNTY PLANNING BOARD
Lancaster, NH
December 9, 2015

Present from the Board: John Scarinza – Chair; Fred King – Vice Chair; Jennifer Fish – Clerk; Ed Mellett, Mike Waddell, Commissioner Tom Brady, Rep. Leon Rideout, Rick Tillotson, Scott Rineer; alternate Tom McCue; and Board Secretary Suzanne Collins.

Also in Attendance: Bernie Waugh, Esq.; Tara Bamford, North Country Council; Ron Anstey, NH Fire Marshal's Office; Howie Wemyss, Mt. Washington Summit Road Company; Josh McAllister, HEB Engineering; Richard Frazier, BMA Architects; Peter Middleton, Martini Northern Construction Managers; Burt Mills, Ed Brisson, David Norden, Clay Smith, Dixville Capital, LLC; Beno Lamontagne, DRED; Scott Tranchemontagne, Montagne Communications; and members of the press.

John Scarinza, Chair, called the meeting to order at 6:10 PM.

APPROVAL OF MINUTES OF DECEMBER 2, 2015:

Rick Tillotson made a motion to approve the minutes of December 2, 2015 as distributed. Commissioner Brady seconded the motion. There was no discussion and the minutes were unanimously approved by voice vote.

PUBLIC COMMENTS NOT RELATED TO AGENDA ITEMS: None.

NEW BUSINESS:

A. **Green's Grant:** Conceptual Review of the Glen House Hotel.

Josh McAllister, PE from HEB Engineering presented the plan for an 18.16 acre site in Green's Grant owned by the Mt. Washington Summit Road Company (MWSRC). The building site has 1,000 feet of frontage along Route 16. All sides of the lot to the North, South and West are owned by the MWSRC. The property is bounded by Route 16 on the east side and the property on the other side of Route 16 is also owned by MWSRC.

The proposed building is a 3-story 67 room hotel that will be located in basically the same location as the former Great Glen Trails building which was destroyed by fire several years ago. The driveway access from Route 16 will be relocated 100' to the south of the current driveway. There are concerns with the current culvert under Route 16. The parking lot will be a little more "robust" than the old parking lot. It will be paved and contain 77 spaces with 13 overflow spaces included in the plan. Parking areas will have the necessary landscaping and this aspect is currently in the design stage. Allowance is made for snow storage along the perimeter of the parking lot and along the entrance driveway. Drainage is primarily in the front of the

building and will be managed through 2 bio-retention areas designed to accept water which will filter through an area of shrubbery. The design includes retrofitting the current retention pond to be a bio-retention pond. The previous lower patio area will have a drainage pond; under it is a reservoir.

The current seepage area will be replaced as the current one has failed. This part of the project is currently in the final design stage and it is expected that plans for the septic system will be submitted to NH DES later during the week.

Domestic water will be from the current well plus a secondary well will be drilled.

A water line coming from the south end of the property and across Route 16 will feed a sprinkler system. Additionally, there will be a large geo-thermal field in the parking lot. There may also be some solar panels added to the plan.

Richard Frazier, BMA Architects, went over the building plan which was essentially the same as presented to the Board at its July 29th meeting. The partial walk-out basement will house hotel services. The front and back of the building are similar as the front side is toward Route 16 and the back side looks out at Mt. Washington. Fifty percent (50%) of the rooms have balconies on the back side. The floor plans are still in the design stage. The hotel will be 54,000 total square feet – 225' long and 65' wide. The height to the peak of the roof is 51.5 feet.

Mr. McAllister stated that on October 30th, the driveway permit application was submitted to the NH Department of Transportation, the Alteration of Terrain (AoT) permit was submitted to NH DES. Relocating the driveway impacts minor wetland areas. He stated that the Wetland Permit application is also pending. He stated that he expects to hear from NH DES by mid-January.

Rick Tillotson asked about the size of the water line from the reservoir for fire protection. Mr. McAllister replied that it is a 6" line. Rick asked how many sprinkler valves would be installed. Mr. McAllister replied that this is still being analyzed by the mechanical engineers.

Tom McCue focused on the 51.5' height of the building and asked if that was determined on the front side of the building. Mr. Frazier replied that it had. The height to the eaves is 30'. Tara Bamford read the Board's definition of allowable building height and advised the Board that it needs to deal with the height factor. She did state that the most recent Zoning Amendments allowed the Board to grant exceptions with the process outlined in the regulations.

John Scarinza stated that the County Commissioners had asked the Fire Marshal's office to review the plans. Mr. McAllister asked if the Board wanted him to coordinate directly with the Fire Marshal's Office or run everything through the Board.

Ron Anstey, NH Fire Marshal's Office, advised the applicants to get this worked out prior to site plan review. He stated that Type V-B construction allows for 60' from the building code standpoint. He noted that the applicant will need to pay particular attention to fire department access.

John Scarinza asked Board members if they were agreeable to direct communication and coordination between the applicant and the Fire Marshal's Office.

John also asked if the water supply must be permitted by the State. Mr. McAllister stated that HEB Engineering will submit the water supply location information to NH DES in the near future. The new well will not be drilled until spring and the water system approval will not happen until spring either. The septic plan will not receive final approval from the State until the wells are approved. He added that as part of the submission of the AoT application, all the engineering on the whole site has been done. It will be modified if the State requires modifications.

Edith Tucker asked what will be done to allow access to the trail system under Route 16. Mr. McAllister replied that a part of the trail system will be eliminated.

Mike Waddell asked if the applicants have met with the local fire departments. Mr. McAllister stated they have not yet but plan to do all fire safety reviews with both the Fire Marshal's Office and the local departments.

John Scarinza advised the applicant to coordinate directly with the Fire Marshal's Office. The Fire Marshal's plan review for the structure should provide the Board with the information it needs to grant a height waiver.

Mr. McAllister stated that their goal is to have all state permits by the end of January and be ready to begin construction in the spring. They hope the Board will schedule a Public Hearing on the project in January.

B. Dixville: Discussion regarding The Balsams PUD Development Agreement (DA):

Scott Rineer recused himself from the Board for discussion regarding The Balsams Project. John Scarinza designated Tom McCue to sit in his place.

Attorney Waugh distributed copies of an updated PUD Development Agreement to be executed between Coös County and Dixville Capital, LLC. Attorney Waugh stated that this document contains the standards and rules that will guide the Planned Unit Development for The Balsams Resort. It is consistent with understandings discussed at prior meetings as well as the Zoning Ordinance. Once executed, it will be recorded with the Coös County Register of Deeds. The Board's written decision in accordance with the Proposed Findings covered at last week's meeting is attached as Exhibit A. Tara Bamford explained that a DA is needed to finalize the PUD and is recorded much as a developer would record a mylar.

Dave Norden stated that the Proposed Findings need some fine tuning before the document will be ready for signature. His team has gone through the Proposed Findings which they only received at the December 2nd meeting. They have a red-lined document to present to the Board.

Attorney Waugh stated that he has not seen the red-lined document and would like the opportunity to go through it. Dave Norden stated he and his team want to go through it with the Board stating, "It is vital to discuss this red-lined document with the Board".

Fred King stated that at the end of last week's meeting it was his understanding that we had a document that might need some minor wording changes and that the developers would meet with the Board's attorney to talk about suggested changes. The exercise of working out changes would happen prior to the Board's meeting tonight.

John Scarinza explained that Tara Bamford reached out to Dixville Capital the day after the last meeting. Tara stated that both she and Attorney Waugh knew they could not make substantial changes without Board approval. She stated that she did not get a reply.

Attorney Waugh said he needed a chance to digest the red-lined document information before advising the Board. He noted in his cursory review that there are some minor word adjustments but some of the red-lined items are substantive. He noted that his schedule is tight from now to the end of the holidays.

Dave Norden stated that the Board took time at its last meeting to study the Proposed Findings that had been presented by Attorney Waugh that evening. He requested the same consideration from the Board tonight as it is critical to the developer to be able to go through the requests for changes with the Board.

Rep. Rideout stated that he is getting frustrated with this process. It was clear that between the last meeting and this one there would be a meeting of the minds. It was obvious that the two parties had not gotten together between meetings. John Scarinza re-iterated that Tara had sent an e-mail to the applicant and it is not the Board's fault. Rep. Rideout continued that the Board has said over and over, get together and work together. He expected finalizing a development agreement tonight. This process should not take forever. There is a failure to communicate between the Board and the developer.

Commissioner Brady requested that the developer share copies of the red-lined document with the Board members. Fred King agreed that Board members should take a look at it. Dave Norden stated that they are not trying to put the blame anywhere; they want to work collaboratively. Copies were distributed. Chairman Scarinza asked the Board members to review the document and called for a break at 6:45 PM. The meeting resumed at 6:55 PM. John Scarinza stated that this document

will guide the project for the next 20 to 30 years, perhaps 50. Significant changes are proposed in the red-lined document and it is imperative for the Board to have a thorough legal review in order to make an informed decision.

Fred King stated the Board had changed its Zoning Ordinance in record time with an understanding that 20 years from now, a future Board will have a clear road map to follow. He reiterated that there needs to be a meeting of the minds between the Board's attorney and the developer. He added that he is definitely not qualified to do a legal review.

Burt Mills stated that he and his team would like the Board to understand what they are proposing. He stated they want the "General Safety Valve Condition" renamed "General Public Health and Safety Condition." The PUD gives a particular set of rules with some incorporated into The Balsams Resort District. Their understanding of safety valve was that it specified clearly that safety concerns would be addressed by the Board and modifications would be made for future phases if there was a concern for specifically identified adverse impacts upon public health. He stated that the Board's proposed language opens up the entire PUD to review. He wondered if this condition says what we all thought it said. He implored the Board not to take the knees out of the PUD. Dave Norden stated he understood the Board's concerns for public health and safety and thought that was the primary issue.

Dave Norden stated that if dimensional requirements need to be changed in the future due to public health and safety, they agree.

Mike Waddell stated that his concern does not entirely revolve around public health and safety. He said that he previously brought up the issue of zero setbacks and the developer talked about fractional ownership and that Dixville Capital owns all the area around the development. He stated that this Board had not yet had the opportunity to look at the ownership language. Dave Norden stated that the ownership document will be brought forward when it is available.

Attorney Waugh offered to share his legal advice with the Board's permission.

Tom McCue remarked that the developers are not just changing the name of the safety valve condition, they are red-lining Zoning Ordinance 4.12.9 and he is not comfortable with red-lining that.

John Scarinza asked if this changes what the Board agreed to last week. Tara stated that a PUD would normally include square footage, dimensional requirements, etc. The message from the developer was that the Board will get that information during the site plan review for each phase. Burt Mills added that in Ordinance 4.13 Additional Requirements for Subdivision and Site Plans, they are required to produce the information that is included in 4.12.9. Items A-P of 4.13 requires them to bring all the information to the Board. Their thought was to bring it in site plan by site plan in phases.

John Scarinza stated that this discussion goes to the point that the Board is not giving enough time for due diligence. "We are paying two professionals and it is a huge error at the last minute not to let them do their work".

Attorney Waugh once again requested the Board's approval to share his advice in public.

Mike Waddell made a motion to request that Attorney Waugh share his concerns discussed earlier that evening in a non-meeting with Counsel. Ed Mellett seconded the motion. All members voted in favor of the motion.

Attorney Waugh stated that his understanding when he was asked to draft a development agreement was that it would incorporate his legal advice. His overall concern since the PUD application was submitted is the lack of detail. He has worked in New Hampshire on several PUDs and all have had a significant amount of detail. He wondered how a Board could make a decision without more detail. For that reason, the Safety Valve Condition is needed and so is its reference to Ordinance 4.12.9. He advised not to change that. He explained that his role as a lawyer is to predict what a judge might say; he tries to predict what might happen later on and 20-30 years out is a long time. The reason for the Safety Valve is if something occurs that we all would agree is bad, does a future Board have a leg to stand on? If there is some aspect of the project in the future that the Planning Board cannot support, there is a safety valve to hang its hat on.

Attorney Waugh read an excerpt from Section 4. of the Proposed Findings, "However the applicant and the Board recognize that many of the specific details of future phases of the development have not yet been determined, or presented to the Board. For this reason the Board is including a "safety valve" condition of approval in order to preserve its authority to respond appropriately to new information relevant to the criteria in Section 4.12.9." He added that any rejection has to be based on new information. He stated that he cannot answer Burt Mills' question as to whether this can be addressed when site plans are brought in. His advice now is "do not take 4.12.9 out of the safety valve".

Rick Tillotson asked if the developer wants the Board to hurry or to get this right.

Burt Mills stated that they have a concern that some of these issues would have to be decided by the Board and not by Attorney Waugh and Tara Bamford on their own.

Dave Norden replied to Rick Tillotson's question that they want to get this right and that is why they took the time to refine some of the language. If the Board wants them to meet with Attorney Waugh and Tara, they are fine with it. They did not meet with them as it is the Board that makes the decisions.

Rick Tillotson said that he recommends no action on the proposed red-line changes or on the DA until the developers meet with the Board's professionals.

Rep. Rideout referred the Board to the developer's proposed language in item 6. on page 4 whereby "Applicant has the right to review and accept or reject the scope and fees of an impact study or peer review prior to commencement of the work." He stated that he is not comfortable voting on the DA tonight. The Board advises the developer and the Board's professionals to get together, work together and it has not been happening. The expectation that the Board members will review and vote on documents handed to them at a meeting is not realistic.

Mike Waddell stated that Attorney Waugh advised the Board that there are red-lined items that he will advise the Board not to agree to. He asked that perhaps the Board could get the housekeeping items out of the way and get to the meat of the matter.

Attorney Waugh stated he would meet with the developers and prepare a list for the Board of the following items:

- Here's the things we agree on;
- Here's a list of things that we both agree on after discussion; and
- Here's the things that require a decision from the Board.

John Scarinza and Ed Brisson both agreed that the whole key here is that neither party has had enough time devoted to this development agreement.

Fred King asked if a Board member or two should sit in on the discussion between the attorney and developer.

John reminded Board members that the Board approved a PUD and as far as negotiating what is in that approval, we cannot be changing substantive things.

Attorney Waugh replied that he will not be negotiating changes. It is important for him to understand what the applicant wants the Board to understand from their perspective. It should be a useful process to understand each side's rationale. Tara cautioned that some of the red-lined stuff is changing the decision that has already been made.

Mike Waddell referred to Page 11 on the Dixville Capital red-lined document. He noted that they struck out all of Section K. Dave Norden replied that they are comfortable with Section K. but did not think it needed to be in the development agreement. Mike stated that what gets recorded at the Registry must be something that we can all agree on.

Dave Norden stated that it is his plan to create a DD-Resort Handbook that goes beyond what is in the Development Agreement.

Commissioner Brady summarized his expectation that Tara and Attorney Waugh will meet with the developers and bring back what issues caused no problems, what issues could be resolved through compromise and a rationale for those things that will not change. Ultimately, this Board needs to make some decisions.

Rick Tillotson reminded the developers that each and every member of the Planning Board wants a successful 20, 30 or 50 year project. He has no problem considering amendments in the future if they make sense.

Ed Brisson asked if there was a possibility to have a few Board members in attendance at the meeting(s) with the Board's attorney. Tom McCue cautioned that the Board comes under the State's Right to Know Law. He stated that the Board's advisors will be speaking with the applicant; they are not negotiating with the applicant.

Burt Mills stated that everyone needs to read the agreement and understand it before they sign. Some terms may not be the way you thought you remembered them from a previous meeting. He said he listened to the tapes of the last meeting and what they brought in tonight was just printed and prepared. They were not trying to be cavalier and realized they were late in bringing in this red-lined document.

DATE AND TIME OF NEXT MEETING:

In discussing a proposed date for the next meeting, Jennifer Fish stated that she is in the process of finding a backup for Sue Collins when Sue is unavailable to take minutes due to other commitments. She asked Board members if they had any suggestions.

It was agreed that the next meeting would be at 6 PM on January 18, 2016 in Gorham. A Public Hearing on the Glen House site plan will be on the agenda in addition to the Development Agreement for the Balsams PUD.

ADJOURNMENT:

Rick Tillotson made a motion to adjourn at 7:45 PM. Ed Mellett seconded the motion. All voted in favor.

Respectfully submitted,

Suzanne L. Collins
Secretary to the Planning Board