

COÖS COUNTY PLANNING BOARD  
Granite State Room, Lancaster NH  
November 23, 2015

**Present from the Board:** John Scarinza – Chair; Fred King – Vice Chair; Jennifer Fish – Clerk; Ed Mellett, Mike Waddell, Rick Tillotson, Representative Leon Rideout; alternate Tom McCue.  
*Excused:* Commissioner Tom Brady , Mark Frank, and Scott Rineer

**Also in Attendance:** Tara Bamford, North Country Council; Bernie Waugh Esq.; Ron Antsy, NH Fire Marshal; David Norden and Burt Mills, Dixville Capital, LLC; Edith Tucker, *Coös County Democrat*; Jake Mardin, *News and Sentinel*; and members of the public.

John Scarinza, Chair continued the meeting from November 17, 2015 at 6:02 PM.

**REVIEW OF PLANNED UNIT DEVELOPMENT APPLICATION:**

Tara explained that she met with the applicant regarding last meeting's discussion about the definitions dwelling units and lodging units. The applicant has alternative language that they will present to the board rather than definitions. The applicant will eliminate the section on pg. 35-36 and revise the language under maximum overall density on pg. 31 of the application. Tara will work with the applicant on the revised language that the board will review as part of the development agreement. The applicant's proposed revised language for maximum overall density will state The Balsams Resort PUD plan (DD-Resort District) establishes maximum allowable residential density as 4600 dwelling units. The applicant will provide written criteria which shall serve as guide in the calculation of the 4600 allowable units.

The board continued the review of Tara's analysis below:

Requirement/Element	Application	Analysis	Recommendations

Requirement/Element	Application	Analysis	Recommendations
<b>Part III: PUD Review Standards - Site Plan Review Regulations Binder p. 29- 33</b>	The application contains alternative language to the Coos County Site Plan Regulation procedures including fees, performance guarantee, inspection fees, and submission requirements.(pp. 29-31)	The applicant was informed several times by the Board Chair, planning consultant and legal counsel that revisions to site plan review procedures could not appropriately be included in a PUD approval. The applicant was requested several times to remove this section of the application.	<p>Any motion for approval should clarify that this section is not part of the application being approved.</p> <p><b><i>The board agreed with this recommendation. Also state law will pertain to consulting fees.</i></b></p> <p><b><i>It was agreed that the language for performance guarantees will remain the same as the site plan regulations. It was agreed that in the development agreement the language would include if provisions were in place to protect the buyer than a performance guarantee would not be required.</i></b></p> <p><b><i>Inspection fees: Inspections will still be included. The exception is water and sewer because that is deferred to the State issued permits or a third party that is not hired by the board.</i></b></p> <p><b><i>Submission requirements: The board agreed not to amend the requirements but will add language in the development agreement.</i></b></p>

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	The application includes alternative parking standards for site plan review Section VI. General Standards. Section A.1. (10/6/15, p. 31-32. Item #1.)	Parking standards were recently researched by NCC's Transportation Planner and Planning Director and carefully considered by the Board as part of the recent site plan review amendment process. The potential of a large resort-type development was considered as a possible example. The abbreviated time to conduct this review has not enabled additional research to provide documentation to support the additional changes proposed.	It is recommended that this item be rejected and that language be incorporated in the development agreement to agree that the Board will consider reduced parking standards as part of site plan review with <i>adequate</i> documentation and <i>outside review</i> . In addition, where reductions are allowed, there should be a provision for a periodic check-in with the Board to evaluate the adequacy of parking, and a requirement for a reserve parking area in case the initial amount proved insufficient for driver safety and environmental protection. <b><i>The Board agreed to include in development agreement with the following amendments: the word "adequate" will be inserted before documentation and "outside review" will be deleted.</i></b>

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	<p>The application proposes substitution of a state AOT permit for site plan review Section VI. C. stormwater management provisions. [10/6/15, p.32, item #3]</p>	<p>Stormwater management provisions were carefully reviewed and discussed by the Board as part of the recent site plan review amendment process. The potential of a large resort-type development was considered as a possible example. The Planning Board has a responsibility that, although overlapping with the state and federal agencies to a great extent, is not exactly the same. There may be cases where any concerns of the Board will be met with provision of the required state and federal permit. There may be other instances where the Board has different or broader interests. It is important to keep in mind that state and federal review is very specific to state and federal laws. State and federal regulators do not have the discretion to provide a coordinated “big picture” manner the way a consulting engineer hired by the Board can. In addition, regulations lag behind technology and best practices.</p>	<p>It is recommended that this item be rejected.</p> <p><b><i>Bernie recommended that some type of safety valve language such as, the planning board reserves the right in the future to react to be able to specifically identify inverse impacts that are presented by a specific application. The time to address this would be in site plan review.</i></b></p> <p><b><i>The board agreed that Tara will add language to the effect that for elements covered by the AOT permit, the permit should be accepted as evidence. Stamped plans will be required.</i></b></p>

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	The application requests waivers from several aspects of the lighting requirements contained in VI.G. on page 33 of the October 6 binder.	This waiver request did not follow the process required by the Zoning Ordinance (Section 4.12.7(g). Further, outdoor lighting provisions were recently reviewed and amended by the Board as part of the site plan regulation amendment and update process. The potential of a large resort-type development was considered as a possible example.	A portion of this request would be in keeping with the Board's goal to protect dark night skies, protect the safety of drivers, and prevent light trespass. Specifically Item b. allowing light trespass on property other than single family homes with written permission of the owner may in fact be required to make lighting plans for a resort-type development practicable. Item a. would be contrary to the Board's stated purpose. Item c. is already appropriately addressed in the site plan regulations in G.2.c. <b><i>Tara discussed this item with the applicant. She will recommend some additional language to address the applicant's concerns in the development agreement.</i></b>

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	<p>The application requests a waiver from site plan review Section VI.H. "Provision shall be made for protection of natural features" "due to the fact that sufficient open space is incorporated within the development plan" - page 33 of the October 6 binder.</p>	<p>A universal exemption to this would not be appropriate. This item is not specific to open space for recreation or for balancing densely developed areas with conserved land. More typical in a site plan review process are revisions to site design to protect high priority natural resources or unique scenic resources.</p>	<p>It is recommended that this request be rejected so that meaningful Planning Board input into the layout of sites and best management practices is enabled, but that the applicant receive assurance in the development agreement that, when assessing the adequacy of open space and recreation areas for each specific development application, the open space and recreation areas for the PUD will be considered as a whole, not site by site.</p> <p><b><i>The board agreed with Tara's recommendation.</i></b></p>
	<p>The application requests a waiver from site plan review Section VI.K enabling the Planning Board to set more stringent requirements to the General Standards contained in section VI if conditions warrant in the opinion of the Board - page 33 of the binder.</p>	<p>This waiver request did not follow the process required by the Zoning Ordinance (Section 4.12.7(g)). No justification is provided.</p>	<p>It is recommended that this request be rejected to enable meaningful review of site plan applications by the Planning Board.</p> <p><b><i>After discussions with applicant, Tara agreed that the language is vague. Bernie recommended something similar to the "safety valve language" should be included.</i></b></p>

Requirement/Element	Application	Analysis	Recommendations
<b>Part III: PUD Review Standards - Land Subdivision Regulations, pp 33- 35</b>	The application contains alternative language to the Coos County Subdivision Regulation procedures including minor subdivision threshold, fees, and performance guarantee. (10/6/15, pp. 33-34)	The applicant was informed several times by the Board Chair, planning consultant and legal counsel that revisions to subdivision review procedures could not appropriately be included in a PUD approval. The applicant was requested several times to remove this section of the application.	Any motion for approval should clarify that this section is not part of the application being approved. [JOHN - I'll be prepared to discuss substance if it goes that way anyway] <i>Tara reviewed this item with the applicant. She will work with the applicant to clarify the concerns. The proposed language will be included in the development agreement.</i>
	The application proposes that alternative road standards and elimination of certain requirements in Section 6.01 Streets be approved as part of the PUD Permit. (p. 34)	Road standards were carefully reviewed and discussed by the Board as part of the recent subdivision regulation amendment process. The potential of a large resort-type development was considered as a possible example. The applicant has not provided any of the requested details/documentation/justification to support this request or to enable thoughtful review by the Board or NCC, or a consulting engineer on behalf of the Board.	It is recommended that the Board reject this item as written, but include in the development agreement language affirming the intent of the Board to consider specific alternative road standards developed by an authority such as AASHTO subject to review by the Board's consulting engineer. <i>The board agreed with Tara's recommendation.</i>

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	The application proposes that alternative language to Section 6.02 Monuments be approved as part of the PUD Permit. (p. 34)	The proposed change, instead of requiring stone or concrete monuments, adds “or other method appropriate to the location.” The requirements guiding monument placement and construction would be eliminated.	It is recommended that this request be rejected but that the development agreement affirm that “an alternative method may be proposed for consideration by the Board as part of a subdivision application. <b><i>Tara stated that she would like to update her recommendation. She stated that it would be ok to qualify their language. She recommended to use the applicant’s language but with other permanent monuments/markers determined by the surveyor. The board agreed to Tara’s revised recommendation.</i></b>
	The application proposes that under 6.03.a.no additional water testing results be required by the Board for common water systems. (p. 34)	This section was recently reviewed by the Board as part of the subdivision amendment process. No justification is provided for this waiver request.	It is recommended that the proposed language be amended with the addition of the phrase “...provided the water results submitted to NHDES and the Board were conducted within the past six (6) months. <b><i>The board agreed that instead of Tara’s recommendation the board will defer to DES.</i></b>

Requirement/Element	Application	Analysis	Recommendations
	The application proposes that alternative road standards be approved for d. alignments, e. intersections, and f. grades. (p. 35)	Road standards were carefully reviewed and discussed by the Board as part of the recent subdivision regulation amendment process. The potential of a large resort-type development was considered as a possible example. The applicant has not provided any of the requested details/documentation/justification to support this request or to enable thoughtful review by the Board or NCC, or a consulting engineer on behalf of the Board.	It is recommended that the Board reject this item as written, but include in the development agreement language affirming the intent of the Board to consider specific alternative road standards developed by an authority such as AASHTO subject to review by the Board's consulting engineer. <b><i>The board agreed to include in Tara's recommendation that the standards must be reviewed by the Fire Marshal. Also add language that the applicant may request a set of standards that will apply to the whole PUD rather than have to go through this process for each subdivision or site plan, however the Board will reserve its right to require a higher standard if deemed necessary.</i></b>

Requirement/Element	Application	Analysis	Recommendations
	The application proposes replacement of the section 7.02.f. regarding long narrow or irregular lots with alternative allowing them. (p. 35)	The proposed language would remove the Board's discretion over long, narrow lots.	It is recommended that as an alternative, the Board include in the PUD permit the following statement: In reviewing subdivision applications regarding conformance with Section 7.02.f., as amended, regarding long, narrow lots or lots with irregular shape, the Board will consider the special circumstances of the PUD including condominium style ownership and multiple owning and managing entities. <b><i>The board agreed with the recommendation.</i></b>
	The application requests a waiver from Section 7.04 regarding open space. (p.35)		It is recommended as an alternative that the applicant receive assurance in the development agreement that, when assessing the adequacy of open space and recreation areas for each specific subdivision application, the open space and recreation areas for the PUD will be considered as a whole, not site by site. <b><i>The board agreed with the recommendation.</i></b>
	The application requests a waiver from Section 7.06 - Protection of Natural Features - based on the easements in place - page 35 of the October 6 binder.	This section of the regulations reads: "Due regard shall be shown for all natural features, such as trees, rocks, water courses and bodies of water, scenic points, historic points and similar community assets."	It is recommended that this request be rejected so that meaningful Planning Board review of proposed subdivisions is enabled. <b><i>The board agreed that Tara work with the applicant and Bernie to draft some alternative language for the development agreement.</i></b>

Requirement/Element	Application	Analysis	Recommendations
	The applicant requests a waiver from the erosion and sedimentation requirements - Section 7.07.a. and b. - October 6 binder p.35.	<p>This waiver request did not follow the process required in the Zoning Ordinance Section 4.12.7(g). No justification is provided.</p> <p>Stormwater management provisions were carefully reviewed and discussed by the Board as part of the recent site plan review amendment process. The potential of a large resort-type development was considered as a possible example. The Planning Board has a responsibility that, although overlapping with the state and federal agencies to a great extent, is not exactly the same. There may be cases where any concerns of the Board will be met with provision of the required state and federal permit. There may be other instances where the Board has different or broader interests. It is important to keep in mind that state and federal review is very specific to state and federal laws. State and federal regulators do not have the discretion to provide a coordinated “big picture” manner the way a consulting engineer hired by the Board can. In addition, regulations lag behind technology and best practices.</p>	<p>It is recommended that this waiver request be rejected.</p> <p><b><i>The board agreed that Tara will add language to the effect that for elements covered by the AOT permit, the permit should be accepted as evidence.</i></b></p>

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	The application requests a waiver from review of the width and gradient of Golf Links Road and Valley Road, and to enable trees and rocks to be maintained as desired by the owner - October 6 binder p. 35.	This waiver request did not follow the process required in the Zoning Ordinance Section 4.12.7(g). No justification is provided. The purpose of road design standards is to ensure that by approving a development which will create or increase or change use of a road, the Planning Board does not inadvertently create an unsafe condition, or caused erosion and sedimentation of surface waters. A blanket waiver would not be appropriate.	It is recommended as an alternative that the development agreement include language stating the Board's intention to consider the scenic nature of these roads when reviewing site plan and subdivision applications utilizing them for access, and to consider alternative road standards after review of the Board's consulting engineer. <b><i>The board agreed that Tara will work with the applicant and Bernie to draft alternative language that contains a safety valve for the development agreement.</i></b>
<b>Part IV. Permitted Uses Binder pp.36-37</b>	The application contains an alternative list of permitted uses - pp.36-37 of October 6 binder.	The permitted used in the DD-Resort District were the result of a collaborative process with the Board, the Board's consultants, and the application. The changes made were made as coherent set of amendments lining up uses with appropriate definitions as needed, and careful consideration of which uses should be allowed without a permit and which should require a permit. The applicant may submit a list of which allowable uses, however there is no provision for amending this section of the Zoning Ordinance through approval of a PUD permit.	This section should be explicitly excluded from any motion to approve the PUD permit.  <b><i>Tara explained that the applicant agreed that the list doesn't need to be in the PUD application because it is now in the zoning ordinance.</i></b> <b><i>Tara will work with the applicant to determine how the terms will be applied in the PUD.</i></b>

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<b>Part V. Draft Items for Development Agreement - Binder pp.37-41</b>	The applicant provided draft development agreement items in the October 6 application binder - pp. 37 - 41.	In addition to many of the details and conditions of approval which may change through the review and approval process, the vesting thresholds still need to be agreed upon prior to discussion of the development agreement language. For example, the Zoning Ordinance (Section 4.12.12) requires active and substantial construction to take place within 4 years - otherwise the permit expires. What will constitute active and substantial construction? Should the permit continue to be valid if active and substantial requirements were met, but then the land sits idle for 10 years? 20 years? What amount of time should the PUD be exempt site plans and subdivision applications from future changes in zoning, subdivision or plan review regulations? (674:39 Five-Year Exemption only applies to subdivisions and site plans.) These are important questions that Board members should take some time to think about and discuss with Attorney Waugh before finalizing a development agreement.	<p>This section should be explicitly excluded from any motion to approve the PUD permit.</p> <p><b><i>The board agreed with the recommendation. The board discussed vesting rights in more detail. It was agreed that vesting rights will be included in the development agreement. In order for the project to be vested, substantial completion must occur within 5 years. The board also agreed that if ten years has passed since the issuance of a site plan or subdivision approval, the owner will need to apply to renew the PUD permit.</i></b></p>
<b>Other Issues</b>			

Requirement/Element	Application	Analysis	Recommendations
1. Performance guarantees	The application requests that the Board, as part of its approval of this PUD Permit application, waive the right to require a performance bond for any improvements which will not be publicly owned.	While performance guarantees certainly have the role of ensuring that funds are available to complete construction of facilities to be dedicated to a public entity, this is by no means the only purpose. A performance bond, letter of credit or other surety enables a planning board to grant final approval and recording of a site plan or subdivision plan prior to completion of the required improvements. In other words, it is an alternative available to the developer who, for example, needs to be able to sell lots on the beginning of a road to have the funds to complete the rest of the road. The deciding factor should be which improvements are central to the approval of the application. These are generally considered to be the access road, water, wastewater and stormwater.	The approval should make clear that the Board is retaining its authority to require performance guarantees for site plan and subdivision plans prior to final approval and recording. In addition, this may be an area where some negotiated language in the development agreement to provide some assurance to the applicant that such requirements won't be unreasonable. For example, this requirement might be expressly limited to roads providing access to lots or units to be owned by individuals; water and sewer treatment facilities and mains; and stormwater treatment/management. Phasing of improvements could also be expressly provided for. <i><b>This item was previously addressed by the board.</b></i>

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2. Regional nature of the development	This application is for a large resort development that will be in both Dixville and Colebrook.	Due to the location, construction of each phase of the development of the resort will affect both Dixville and Colebrook. In addition to opportunities to comment on plans to ensure that impacts are fully considered, cooperation between the two jurisdictions will ensure a more coordinated review process and improved planning. Also, something both jurisdictions should keep in mind in the future - According to the NHMA attorney I consulted regarding another situation, when a development in Town A is going to be accessed through a private road in Town B., the changed use of the road is subject to site plan review by Town B.	It is recommended that the development agreement articulate that the Coos County Planning Board will, when reviewing site plan applications or major subdivision applications within the PUD, utilize RSA 36:54. Review of Developments of Regional Impact, and RSA 674:53 Land Affected by Municipal Boundaries to encourage coordination with the Town of Colebrook. <i><b>This item was previously addressed by the board.</b></i>
3. Timing/process	The application still contains in various places the term Final Development Plan, e.g., p. 25. A. 2.	The purpose of the additional application requirements provided in Section 4.12 of the Zoning Ordinance Section 13. Is to enable a PUD Permit to be issued for a conceptual plan such as the application before the Board, and to have an additional step in conjunction with site plan or subdivision review where the Board has the opportunity to review and approve the site plan or subdivision application in the context of this more finalized version of the PUD plan, or a phase of it. If the Board votes to approve this application and issue a PUD permit, that is the final PUD approval, not approval of a concept plan as has been referred to in the meetings at times.	The Development Agreement should clarify that Final Development Plan approval is granted site by site via the Board's approval of a specific site plan or subdivision. There is no additional step called "Final Development Plan." However to enable review of a site plan or subdivision application in context, any of the required application items listed in 4.12.7(f) may be required for the entire Development Area in which the proposed site plan or subdivision lies, along with the items identified in Section 4.12.13. <i><b>The board agreed with this recommendation.</b></i>

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4. Consistent language	The application makes statements about the "DD-Resort District."	This application is for a PUD within the DD-Resort District.	For those trying to follow all this in 10 years, a corrected version of the PUD plan should be filed with the approval, correcting this and making any other substantive changes the Board requests be made to statements or proposed standards. <i><b>The board agreed with this recommendation.</b></i>
5. Final Plan	There are areas where the information in the binder and supplement are inaccurate or different from each other.	There are also likely to be areas where the narrative requires changes to conform with the Board's approval.	Require as a condition of approval submittal for final review and approval a clean, corrected binder and set of large scale maps marked "Draft Approved." Once it has been reviewed and verified as incorporating any conditions of approval, provide two sets marked "Approved" in hard copy and digital form. <i><b>The board agreed with this recommendation.</b></i>

The next meeting is scheduled for December 2<sup>nd</sup> at 6 pm in Colebrook. The board will also meet on December 9<sup>th</sup> at 6pm in Lancaster.

Rick Tillotson made a motion to adjourn and Mike Waddell seconded the motion. All voted yes. The meeting was adjourned at 9:20 pm.

Respectfully submitted,

Jennifer Fish