

COÖS COUNTY PLANNING BOARD  
Lancaster, NH  
September 9, 2015

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

**Also in Attendance:** Bernie Waugh, Esq.; Burt Mills, Ed Brisson, Coralie Stepanian, Dixville Capital, LLC; Tara Bamford, North Country Council; Ron Anstey, NH Fire Marshal's Office; Rich Moniak, Jonathan Frizzell, Scott Stepanian, Rep. Bill Remick, Paul Roy, ProCon Construction.

John Scarinza, Chair, called the reconvened meeting to order at 6:10 PM. Meeting was properly noticed.

**APPROVAL OF MINUTES OF AUGUST 18 and SEPTEMBER 2, 2015:**

Mike Waddell made a motion to approve the minutes of August 18 and September 2, 2015 as distributed. Fred King seconded the motion. There was no discussion and minutes were unanimously approved.

**NEW BUSINESS:**

None.

**PUBLIC COMMENTS NOT RELATED TO AGENDA ITEMS:**

None.

**OLD BUSINESS:**

**Planned Development Subdistrict Concept Plan Application Review – Dixville Capital, LLC for The Balsams Resort:**

Chairman Scarinza explained that the meeting of August 18 had been continued to September 2 and then further continued to September 9<sup>th</sup> at the request of the applicant.

Scott Rineer requested to be recused from the Board due to a conflict of interest. Chairman Scarinza stated that alternate Tom McCue would continue to sit in Scott's seat as he had on August 18<sup>th</sup>.

John reviewed what has taken place since August 18<sup>th</sup> when it was decided that the Board and the applicant would work with Attorney Waugh and Tara Bamford to complete the

application. He added that this process is unique – it is a large project, it is a long project. The Concept Plan model exists more for a shorter term project or for a phase of a project that within 18 months would have a final development plan for the Board's review. This is not the case with the Dixville Capital, LLC application. Therefore, this causes a difficulty in approving a project that may go out 20-30 years.

John explained that the Board had met with Attorney Waugh to explore better ways to review the project. How does the Board implement a more streamlined process for the different phases of the project going forward that will work better for the Board and hopefully for the applicant?

John suggested that rather than go through the Concept Plan process, the Board will prepare an amendment to the Zoning Ordinance, then when the developer has a new phase to present, the uses are defined. He added that the developer could come in with a Site Plan Review application for Phase 1, it will be reviewed; then Phase 2, etc. and the developer would continue to come to the Board as the project moves forward into future phases.

Attorney Waugh suggested two essential elements:

1. A zoning amendment that will include a provision about vested rights – what those vested rights would be after substantial completion of Phase 1; and
2. The new zoning amendment will say no further concept plan will be required.

Mike Waddell stated that his understanding is that the Board will create a zone with the information that has been provided and then the applicant will submit a site plan review application for consideration.

John Scarinza explained that the Board did not receive the informational documents requested at the 8/18 meeting until September 8<sup>th</sup>. From a timeline perspective, there still needs to be a public hearing on a proposed zoning ordinance, then the Commissioners and Delegation have to approve the recommended zoning ordinance and zoning map change. He stated that the Board's goal should be a "more easy to understand" zoning ordinance and process.

Burt Mills, Dixville Capital, LLC stated that in their proposals they are requesting certain supplemental standards applied to Site Plan Review and the Subdivision Regulations.

John Scarinza stated that it is fair to say that certain road and parking standards can be included in the new zoning ordinance. Attorney Waugh agreed stating there is no legal reason why those standards cannot go into the proposed zoning ordinance. However, he still has questions about the requested language relative to performance guarantees.

Mike Waddell replied that the Board can waive the performance guarantees under Site Plan Review if the request to waive is reasonable.

Ron Anstey from the NH Fire Marshal's Office distributed copies of NFPA 1141 Standard for Fire Protection Infrastructure for Land Development in Wildland, Rural and Suburban Areas – 2012 Edition. He reviewed it with an eye towards, "does the scope of that code fit this development" and it does. The standard gets into road widths, fire department access and water supply. He reminded the Board that only the Fire Marshal can waive these standards and warned the Board and developer that the Fire Marshal cannot waive any code that is not currently written.

Mr. Anstey stated that the developer has provided a definition for dwelling unit. *A dwelling unit is a single unit providing complete and independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation. Four hotel rooms or dorm-like residences (i.e. employee housing) shall equal one dwelling unit.* Mr. Anstey continued that the first sentence is almost right out of the building code. However the second sentence about hotel rooms and dorm-like residences needs to be separated from the definition – that addendum needs to be broken out. He added that any dead end streets need to be built to accommodate fire equipment. He hopes that the NFPA 1141 will be helpful as the zoning ordinance is written.

Ed Brisson stated that he understands that zoning and site plan review cannot possibly incorporate all the codes in existence. He understands, for example, that if zoning says it's a 10' road and the fire code requires a 20' road then the developer must adhere to the fire code. With all the codes that exist, inconsistencies are not surprising. He cautioned the Board that not every code can be incorporated into a zoning ordinance. He assured the Board that the developers also know that the Board cannot vest life and safety – codes change.

John Scarinza stated to Mr. Mills and Mr. Brisson that the Board is looking for their blessing that the Board will take the information they have provided and craft a zoning amendment to take to the Commissioners and Delegation. Ed Brisson replied, "You can have a zoning amendment based on a Concept Plan, whether that is needed here, I don't know". He added that what is being proposed in Lake Village portrays a concept of the development plans to be presented.

Attorney Waugh explained that the problem the Board has faced is that the notion of concept is different than the way the developer has presented it. It shouldn't be called a concept plan – the current zoning ordinance confuses the meaning of a concept plan.

Mr. Mills and Mr. Brisson asked to be excused for a private conference at 6:35 and they returned to the meeting at 6:50.

Mr. Mills asked what the Board sees as next steps. John Scarinza replied that if the developer agrees, the developer will withdraw the Concept Plan application with the understanding that the Board will create a zoning amendment. Tara Bamford added that a comment period on substance will be required.

Attorney Waugh added that RSA 675:3 states that the vote of the legislative body cannot occur until the proposal has been on record for 5 Tuesdays after the Public Hearing. That is why the developer asked if they can submit a Site Plan Application for Phase 1 concurrently.

Tara Bamford stated that the zoning amendment will change the requirement that a Concept Plan has to go to the Commissioners and Delegation for each phase.

Attorney Waugh outlined the plan:

1. Get new zoning ordinance language in final shape;
2. Hold a Public Hearing;
3. Wait 5 Tuesdays; and
4. Vote by Delegation.

He added that Site Plan Review can start anytime an application is submitted for Phase 1. The Board can't grant final approval of Phase 1 Site Plan Review until the zoning amendment has passed.

Ed Brisson asked how much time is needed to get final language for a zoning ordinance amendment. John stated that the parties need to work with Attorney Waugh to draft language, present it to the Board to agree on the language and he is guessing that can be accomplished in a couple weeks. He recommended that Tara Bamford start the writing process and get a draft of the language to Attorney Waugh and John. Attorney Waugh stated that at this point in time he has not been given any policy direction from the Board and asked if the language will be crafted from the language submitted by the developer.

Tara Bamford stated that there has been no substantive review of what the developer has proposed.

Rick Tillotson made a motion that Attorney Waugh, Tara Bamford and John Scarinza will work with the applicant to finesse the language of a zoning ordinance contingent upon the developer agreeing to this process. Mike Waddell seconded the motion.

Discussion followed. Attorney Waugh stated he wanted to hear Tara's comments first relative to substantive review. Burt Mills stated that the zoning portion has to acknowledge the scope, breadth and diversity of the project. John suggested that the zoning ordinance must define permitted uses, land use standards, roads, etc. Then the developer will know what is allowed. After that is established, the developer comes to the Board with Phase 1 Site Plan application that includes building design, roads, etc.

Tara Bamford suggested that the language reflect more what other towns have in their Planned Unit Development zones. The PUD would adhere to the developer's Master Plan for their land. That would be part of the amendment.

Fred King stated that over the long range, times change and regulations, codes and laws change. This Board cannot guarantee that those will not change during the life of the project. Ed Brisson replied that he understands that. But the Master Plan for The Balsams Resort could be approved for 20 year vesting.

Attorney Waugh stated that there would be a development agreement that is part of the zoning amendment.

Ed Brisson asked Board members what aspects of the existing process are troublesome.

Mike Waddell replied that right now the developer has a concept plan that is contingent upon changes to the zoning ordinance, changes to site plan review and changes to subdivision. With the new zoning ordinance, the Board and developer will have a clear, clean path. This way, the Board deals first with the comprehensive zoning ordinance and then can make quick progress. The zoning ordinance will make order out of chaos.

Rep. Rideout explained that the developer's plan does not fit into the Board's current regulations.

Attorney Waugh stated his concern as a lawyer – there is a well-developed procedure on how to amend a zoning ordinance and how to review an application. Right now, this Board is dealing with a hybrid and these need to be separated out. John Scarinza added that the Board is trying to find a way to accomplish the goals of everyone involved. The developer is looking for a set of rules and a process that they can depend on.

Ed Brisson stated that if they can work collaboratively with Tara Bamford and Attorney Waugh, there is a huge advantage to that. But what if they embark on this route and 4 weeks from now those parties agree to language that they are comfortable with and then Board doesn't approve it.

Rick Tillotson stated that there is more opportunity for success with the suggested process. He and John stated that there has to be a certain amount of trust.

Tara stated that her comments will be ready in one week. Since August 18<sup>th</sup> she has been available and she has not been contacted by the developers.

John Scarinza stated that we may not agree with everything the developer proposes but the goal is to get a zoning amendment that is workable and reasonable.

Attorney Waugh suggested that a collaborative process is included in the current motion. There is a way to separate out some things that both parties disagree on.

Burt Mills stated that they want to make some progress at some point and when should the developers see that happening.

John Scarinza replied that Tara will perform a substantive review of the materials that have been submitted. That review will be submitted to Attorney Waugh and John.

John stated that NH has Rural Road Standards and he will be expecting compliance with those. Ultimately, it will be up to the Planning Board to decide to go with the Dixville Capital standards or the NH Rural Road Standards. Burt Mills stated that they want the ability to have short sections of road at 15% grade and neighborhood roads. The standards that he suggests come out of the Town of Newry, Maine. He believes that he can make a convincing argument for these proposed standards and would like the opportunity to vet that.

John Scarinza stated, "That will happen at the next meeting". Mike Waddell stated that road standards are not contained in zoning. Attorney Waugh advised that it is legal to put road standards in a zoning ordinance. Tara Bamford cautioned, "Be careful what you ask for." She added that standards in Site Plan Review are easier to waive than in a zoning ordinance. Fred King asked, "Aren't these roads their private roads for their customers?" Mike Waddell agreed but added that the roads must be designed to accommodate fire trucks and ambulances.

Rep. Rideout stated that he understood that the new zoning ordinance could cover roads. Do these roads have to meet state standards – probably not. However, the State Fire Marshal stated they would not get an occupancy permit if the roads are not safe.

Attorney Waugh stated that a zoning ordinance will be crafted that will be hashed out at the next meeting.

Mr. Mills added that there are four different places in the developer's submittal that assure the Board that there is no intention that any of the roads within the development will become public ways. Tara Bamford asked those in attendance to keep in mind that the purpose of road standards in a subdivision is to protect the future buyers.

John asked Burt Mills to submit the road standards they are using to the Board. Burt Mills stated that the developers are referring to the AASHTO standards and a subset of those.

Rick Tillotson assured the developers that they should not think they failed twice with the two Concept Plan submissions. The current submission shows they have honed the first submission and through that process they have convinced the Board to have a zoning amendment for this special resort district.

Rick Tillotson called for a vote on his motion after concurrence with the applicant.

Ed Brisson stated he appreciates this approach and thinks it is the best way to go. He stated he also appreciates the Board working diligently on how to get this done. He appreciates the opportunity to discuss what they want and why.

John Scarinza called for a vote on the collaborative process outlined in Rick Tillotson's motion. All Board members voted in the affirmative.

Burt Mills requested time to present a 3 minute synopsis of what is different in the new Concept Plan document submitted on September 8<sup>th</sup>.

- Page 8: A table (Balsams Resort Concept Plan – Summary of Land Uses) was inserted that gives a sense of the Dixville side of the project covering 8,175 acres and 4,600 dwelling units. He asked if the Board had any questions. There were none.
- Page 12: There is a discussion of the Protected Districts on the current Zoning Map. Protected Districts PD5 through PD8 are described as to location and use.
- Map I 4 Existing Conditions Lake Village Area: This map was revised per Rick Tillotson's observations that certain buildings had been demolished and should be removed from the map. A cross hatch pattern shows the demolished facilities.
- Map K 1 Balsams Resort Concept Plan Map: This map describes all the development areas – it shows the 4,600 dwelling units, the 4 primary areas and smaller areas that are potential development lands. Some of these smaller areas may never be developed if they are used for mitigation.
- The density is 4.4 units per acre.
- Exhibit 4: Synopsis of the 4.01 Water Quality Certification Permitting Process.
- Wetlands Summary is not as detailed because it is still in the works with the State.
- Exhibit 5: Water Quality Certification.
- Exhibit 6: Real Estate Market Study.
- Exhibit 7: Quit Claim Deed that incorporates the NH Forest Society easement language. Subsections talk about particular retained rights of the owner.
- Table of Contents: Exhibit 8 – NH Division of Historic Preservation is not in the submission.
- Exhibit 9: Natural Heritage Bureau Review Report covers Exhibits 8 and 9.

Mr. Mills added that he has incorporated many of Rick Tillotson's recommendations. Others will show up during Site Plan Review.

John Scarinza asked how much time is needed to craft the zoning amendment. Tara Bamford replied that she will take the developer's proposed language and craft it into a

zoning amendment by the end of next week. She stated that she has September 28 and 29 available for another meeting with the Board.

Attorney Waugh stated that if he gets Tara's language by September 19, a meeting in 3 weeks is a reasonable time request.

Rick Tillotson asked if the Board needs further Board of Commissioners authorization for additional legal and professional planner expenses. Tara stated that she is still within the scope of work agreement with the County. Attorney Waugh stated that his fees are reaching the limit he was given. Commissioner Brady stated that he and Jennifer would look at the budget and present any budget transfer required to the Board of Commissioners and Delegation subcommittee on budget transfers.

Mark Frank asked if Tara's document will be received by the Board in advance of the next meeting. Tara stated it would be sent to Attorney Waugh, Board members, and the applicant in advance.

Attorney Waugh stated that as a result of his discussions with the developer, he will bring a list of policy issues to be discussed.

Burt Mills asked about the geographic boundary for the regional impact area for this project. He would like to meet with the appropriate people in advance of a public hearing to do some due diligence. John Scarinza suggested that if in doubt, notification of regional impact should go to all towns Lancaster north and all towns Berlin north. Berlin has an airport which could be impacted. Commissioner Brady suggested all towns in Coös County. Attorney Waugh stated that regional impact does not apply to a zoning amendment. Mr. Mills replied that he knows that but he wants to provide some information in advance of the need for regional impact notification. Rick Tillotson inquired about state boundaries – do the regional impact notification requirements transcend the state line? Mike Waddell stated that we are complying with NH law. Attorney Waugh agreed that regional impact only applies to state municipalities.

**DATE AND TIME OF NEXT MEETING:**

The decision was made to schedule the next meeting for Tuesday, September 29 at 6 PM in Lancaster for a work session. The Board will hold a non-meeting with legal counsel at 5 PM.

**ADJOURNMENT:**

Rick Tillotson made a motion to adjourn the meeting at 7:50 PM. Fred King seconded the motion. All members voted in favor of the motion.

Respectfully submitted,  
Suzanne L. Collins  
Secretary to the Planning Board