

TOWN OF THORNTON PLANNING BOARD

Approved on: May 7 2021
PB Initials: SD
Rec'd by Town Clerk on: 5/14/21
Town Clerk Initials: Ken for DM

Planning Board Meeting Minutes Thursday, March 18, 2021

NOTE: In light of the COVID-19 pandemic and pursuant to Emergency Order #23/Executive Order 2020-04 as amended, "Temporary modification of municipal and local government statutory requirements," this meeting was limited in scope and was conducted via teleconference with a base at the Town Offices, 16 Merrill Access Road, Thornton, NH.

CALL TO ORDER – PLEDGE OF ALLEGIANCE:

Chairman Steven Babin called the meeting to order at 6:03 p.m.

ROLL CALL:

Members present at Town Hall: Steven Babin; Chairman, Frank Freeman; Vice-Chairman, Nancy Decoteau, Donna O'Donnell, Roy Sabourn, Kerrin Randall; Assistant to the Planning Board, Karen Waters

Members present via call-in: Kathy Menici, Planning Director, Town of Thornton

Members not present: Peter Laufenberg, Nancy Decoteau

Alternates present at Town Hall: None

Alternates absent: Cynthia Schofield, Gloria Kimball, Julie Piehn, David Rivers

Others present via call-in (partial names are as they appeared via Zoom):

Alex Lash, Brett Owings, Butch Burbank, Cher Duffield, David e Kelley, Elaine Scholtz, Franparisi, James (JS), Jeremy Duffield, Jonathan Grebow, jp0987@live.com, KATHERINE's iPad, Kayo Matsushita, Laurie's iPhone, Marc Brown, Marcia King, Max Lash, mcs, Mike Plotnick, Peter Laufenberg, Ron Sykes, Rothm, Sally Davis, Scott, Steven Keach, Tim Kingston, Tom Johnson, William

Others present at Town Hall: Francis Parisi, Vertex; Philip Hastings, Attorney for Owl's Nest; Brian Lash, Owl's Nest; Chad Stocker, Owl's Nest; Jon Warzocha, Horizons Engineering

APPROVAL OF MINUTES:

Upon distribution and review of the meeting minutes of February 18, 2021, the members took the following action:

MOTION: "To accept and approve the Minutes of the Thursday, February 18, 2021 meeting as amended."

Motion: F. Freeman

Second: D. O'Donnell

Discussion: Ms. Randall stated the following was amended by Ms. Menici upon initial review:

Page 3; RE: Vertex engineering report

- ~~Tension~~ **Detention** basins (small ponding areas) with a structure that releases water to match the pre- and post-construction runoff.

Roll Call Vote: 3 YES - 0 NO - 2 ABSTAIN

Motion passes.

PRELIMINARY BUSINESS:

1. Board Elections

MOTION: "To elect Steven Babin as Chair of the Thornton Planning Board."

Motion: F. Freeman

Second: D. O'Donnell

Discussion: None

Roll Call Vote: 4 YES - 0 NO - 1 ABSTAIN

Motion passes.

MOTION: "To elect Frank Freeman as Vice-Chair of the Thornton Planning Board."

Motion: D. O'Donnell

Second: K. Waters

Discussion: None

Roll Call Vote: 4 YES - 0 NO - 1 ABSTAIN

Motion passes.

COMMUNICATIONS:

Ms. Menici stated all communications were related to applications on the agenda and are included in the Board's packets with applications.

REPORTS:

Ms. Menici stated all Planner reports and Keach-Nordstrom reports are included in the Board's packets with applications.

UNFINISHED BUSINESS: None

HEARINGS:

1. Continuation of APPLICATION/PUBLIC HEARING – Site Plan Review; Vertex Tower Assets, LLC as agent for Michael C. Sununu and James G. Sununu, Trustees of the SMA Realty Trust, Upper Mad River Road. [Map 17 Lot 5-21].

Mr. Parisi introduced himself as the representative for Vertex Tower Assets, LLC. He stated this is the seventh (7th) public hearing before the Planning Board, and that he had been before the Zoning Board (ZBA) six (6) times; initially filed in July 2020 to the ZBA and filed in July 2020 to the Planning Board.

Mr. Parisi stated a concern from the last meeting in respect to air traffic above this property. He stated he received a response from the FAA that states the tower will not be a hazard to air navigation.

Mr. Parisi stated he also reached out to the Base Commander of Yankee 1 and 2, and they determined there was no concern with the tower regarding their training flights. Mr. Parisi stated the planes do not fly at night, and the tower will not need to be lit per the FAA. Mr. Parisi stated the MOA, the area of activity for military aircraft training, is most of northern New Hampshire; 1,700 square miles. He stated he was able to identify 40 different structures similar to the tower within the MOA including wind turbines that are more than 400 feet. Mr. Parisi stated he believes the concern of low flying planes was relevant, but Vertex has satisfied those requirements in showing there is no concern by those who use the air space.

Mr. Parisi stated since the last meeting a letter from Campton-Thornton Fire Chief was received stating that the proposed access road is too steep for emergency vehicles to reach the tower. He stated he was surprised by this letter, as the Chief submitted a letter of support for the tower at the ZBA meeting. Mr. Parisi stated the Lakes Region Mutual Fire Aid, Campton-Thornton Fire, Thornton Police, and EMS all submitted letters of support.

Mr. Parisi stated the facility will be unmanned, and that other towers in the area are not accessible by emergency vehicles; there is no need to have public safety services up there. He stated the facility is different than residential or commercial properties. He stated trained tower technicians go to facilities like this, and there are very extensive processes to ensure the safety of the technicians and facilities.

Mr. Parisi stated there are towers all over New Hampshire that public safety cannot get to; the Waterville Valley tower cannot be accessed as there is no road. He stated in the industry, they are used to having hard to access facilities. Mr. Parisi stated he respects the Chief's observations, but they were just observations. He stated the originally proposed access off Treeline Road was done to avoid steep terrain but was moved to circumvent these concerns.

Mr. Parisi asked if there is anything else needed to be discussed, as it is time that we move forward.

Mr. Freeman thanked Mr. Parisi for the new information provided and stated he was happy to see something from the FAA. Mr. Freeman stated he wants to see something in writing from the Air National Guard to confirm the statements from the FAA. He stated he lives within a mile of where the tower will be, and he knows how the jets fly. He would like to see a letter from the military that indicates what is being said.

Mr. Parisi stated a letter from the Air National Guard will not be available, as he called the base and was told it is not possible to get.

Mr. Freeman stated the FAA report does not show anything regarding training zones; it is a copy of flight paths that anyone can obtain. He stated he needs something produced from Air National Guard stating there is no hazard.

Mr. Sabourn asked what would happen in the event of a fire at the site; in the past, concrete utility boxes were used to contain electrical fires. Mr. Parisi stated the utility boxes are designed to contain fires if there is an electrical fire.

Mr. Parisi stated most of the electronics are now on the antennae, and that there is an extensive lightning grounding system in place in the event of a strike.

Mr. Babin asked for clarification that if there were an event that caused something to flame, the boxes for utilities at the facility are made to mitigate that. Mr. Parisi stated yes.

Mr. Babin asked Mr. Parisi to submit a copy of the utility container equipment specs that show how they handle fire.

Mr. Babin asked Ms. Randall and Ms. Menici to send a certified letter with return receipt to Yankee 1 and 2 in Connecticut to confirm that they received the letter from the FAA submitted from Mr. Parisi.

Mr. Parisi argued there are other objects like wind turbines and other towers in the area, and that military jets do not fly that low. Mr. Freeman stated they do fly that low.

Mr. Babin stated at the last meeting there was discussion of a third-party engineer reviewing the site plan; a quote was obtained for a review. Mr. Babin stated there are many layers of review for the site plan at the state and federal levels, and that he does not see the necessity for a separate third-party review.

Mr. Sabourn asked Mr. Parisi what the status of alteration of terrain (AOT) and wetland permits at the State level were. Mr. Parisi stated the permits have not been applied for yet, as the state will not consider permitting without town approval of a site plan.

Mr. Sabourn stated this is hard to believe, as permits can be applied for while seeking town approval; several projects have done this.

Mr. Parisi stated the State does not want to get involved too early because the Board could decide to change something in the process, and that could require new permits to be applied for. He stated he has never filed for state permits prior to approval at the local level.

Mr. Sabourn asked if Mr. Parisi would be looking for conditional approval with all state permits required. Mr. Parisi stated yes.

Mr. Sabourn asked if the Board was able to act on the application, as there is a hearing request in Grafton County Superior Court regarding the decision of the ZBA.

Mr. Babin stated the Board can deliberate and vote on the site plan, but all actions are subject to the outcome of the Superior Court hearing.

Mr. Parisi stated the hearing is irrelevant to this Board approving the site plan; possible conditional approval could be given subject to the resolution of the appeal in Superior Court.

Mr. Babin asked Mr. Parisi if there was any other information he had to add to the application. Mr. Parisi stated no.

MOTION: "To accept the Site Plan Review Application; Vertex Tower Assets, LLC as agent for Michael C. Sununu and James G. Sununu, Trustees of the SMA Realty Trust, Upper Mad River Road [Map 17 Lot 5-21] as substantially complete."

Motion: K. Waters

Second: R. Sabourn

Discussion: None

Roll Call Vote: 5 YES - 0 NO - 0 ABSTAIN

Motion passes.

Mr. Babin opened the public hearing, and stated the hearing was for items pertinent to the site plan; the waivers and variances granted by the ZBA are being reviewed at superior court, and this Board cannot speak to those.

Elaine Scholtz, Sugar Run, stated she contacted the FCC to request National Environmental Policy Act (NEPA) involvement. Ms. Scholtz stated she received a pleading ruling, and the FCC will be corresponding with Vertex regarding the concerns she has on the environmental impact of the facility. Ms. Scholtz stated she submitted to the Board wetland maps and watershed data from UNH and the Hubbard Brook Experimental Forest, and that the application should not be considered complete until the NEPA process is completed. Ms. Scholtz thanked the Board.

Mr. Parisi stated the facility is federally regulated, and as part of due diligence a NEPA review will have to take place, as it is part of federal processes of approval.

Jeremy Duffield, Upper Mad River Road, commended the Board for their professionalism in conducting the meeting. Mr. Duffield stated he has attended all the meetings regarding the tower and asked the Board to review a letter he submitted. He highlighted that he believes the visibility test done in November was not done legally:

- Occurred during poor weather
- Balloon was not raised to the full height of the tower
- Balloon was smaller than the width of the tower at the top
- Balloon was taken down before the time advertised

Mr. Duffield stated claims from Vertex that the balloon was not visible are incorrect, as there are photos and videos to dispute these claims. He stated the tower will be visible and will diminish scenic views and property values. Mr. Duffield thanked the Board.

Sally Davis, Sugar Run, addressed the comments made by Mr. Parisi regarding emergency vehicles not needing access to the facility site. Ms. Davis stated this tower is unique from any other, as it is significantly closer to residential properties than the ones referenced by Mr. Parisi. Ms. Davis stated that Vertex has not considered the impact of a fire at the facility in relation to the houses around it, or fire insurance needed for residents.

Cher Duffield, Upper Mad River Road, stated her concern with the height of the tower. Mr. Babin stated the Board cannot speak to the height of the tower, as a variance was granted by the ZBA and that decision is currently being heard in Superior Court. Ms. Duffield thanked the Board.

Kayo Matsushita, Tamarack Road, stated her property is less than 2,000 feet from the site and she moved here because there were no cell towers around. Ms. Matsushita stated an alternative to a tower needs to be found as it will be visible and cause noise pollution. She urged the Board to listen to the citizens and reject the site plan.

Ron Sykes stated claims made by Mr. Parisi regarding access to other towers in the area is incorrect; he has driven to the tower on top of Waterville Valley. Mr. Sykes stated the person Mr. Parisi spoke to at Yankee 1 and 2 was not the base commander, and that the planes absolutely fly at night without the use of radar. Mr. Sykes stated he does not understand why the FAA would deem a tower this large to not be lit in an active military training area.

Kathleen Kelley, Treeline Road, stated the military flight concerns have not addressed the proximity of the tower to Cone Mountain; her concern is that planes flying over Cone Mountain will not be able to see the tower over the rise until it is too late. Ms. Kelley stated the site plan submitted does not show a freshwater vernal pond on the lot in question.

Mr. Babin asked for any other public comment; there was none. Mr. Babin closed the public hearing at 7:04 p.m.

Mr. Babin stated the Board needs adequate time to review everything submitted before deliberations can begin to ensure that all bases are covered for both the Applicant and the Board before a decision can be made. Mr. Parisi stated the Board has had ample time to review and render a decision.

Discussion ensued regarding timelines of submissions.

Mr. Babin stated there is good reason for the Board to take the time to make a motion properly for both the Board and Applicant. Mr. Parisi asked what he would need to provide to help with motion.

Mr. Babin stated addressing the fire safety regarding the utility cabinets, an AOT permit application, commenting on NEPA, and addressing the concern of the vernal pool would be helpful.

Mr. Parisi stated the State would have jurisdiction over wetlands and would determine if the vernal pool was present.

Mr. Freeman stated he wants military acknowledgement that the tower will not be a hazard. Mr. Babin stated a certified letter with a return receipt acknowledging that the report was received will be sent. Mr. Babin stated the Board will deliberate on this site plan at the April 15, 2021 meeting.

MOTION: "To continue the APPLICATION– Site Plan Review; Vertex Tower Assets, LLC as agent for Michael C. Sununu and James G. Sununu, Trustees of the SMA Realty Trust, Upper Mad River Road. [Map 17 Lot 5-21] at the April 15, 2021 meeting.

Motion: F. Freeman

Second: K. Waters

Discussion: None

Roll Call Vote: 4 YES - 0 NO - 1 ABSTAIN

2. APPLICATION/PUBLIC HEARING – Subdivision: Hotel Village; John Warzocha as agent for LCJ Holdings, LLC, Route 175, Owl's Nest Resort. [Map 16 Lot 1-7]

The Board reviewed the sub-division application.

MOTION: "To accept the Subdivision Application: Hotel Village; John Warzocha as agent for LCJ Holdings, LLC, Route 175, Owl's Nest Resort. [Map 16 Lot 1-7] as substantially complete."

Motion: F. Freeman

Second: R. Sabourn

Discussion: None

Roll Call Vote: 5 YES - 0 NO - 0 ABSTAIN

Motion passes.

Mr. Sabourn asked for clarification on the lot numbers, as they do not match on the two plans in front of the Board. Mr. Hastings stated the plan set updated this afternoon has addressed this.

The Board reviewed the sub-division plans.

Mr. Babin opened public hearing.

Butch Burbank asked if there was adequate bonding in place. Mr. Babin stated, yes.

Mr. Burbank asked what the bonding is if a project does not get completed. Mr. Freeman stated Owl's Nest is a private property and that he is unsure if the Town of Thornton has a bonding interest. Mr. Babin stated he will ask legal counsel for clarification on bonding.

Mr. Babin closed the public hearing.

MOTION: "To approve the Subdivision Application: Hotel Village; John Warzocha as agent for LCJ Holdings, LLC, Route 175, Owl's Nest Resort. [Map 16 Lot 1-7] subject to the following conditions:

1. NH-DES Subdivision Approval for proposed Lots 4, 5 and 6 with a note added to the final subdivision plat with the NH-DES approval number;
2. Add the following note to the final subdivision plan: "The ways shown on this plan are intended by the applicant and the Town of Thornton to be planned, constructed and maintained as private ways. Neither the approval nor recording of this plan shall be construed as an offer of dedication of these ways as public highways under New Hampshire law of dedication and acceptance.";
3. Add the following note to the plan: "Lots 4, 5 and 6 of this plan are to be served by the Owl's Nest Resort's community water supply system and on-site wastewater disposal systems to be constructed on residual Lot 1-7."
4. Preparation and recording of a declaration of covenants, easements and restrictions, or equivalent document(s), which establish easement rights (reciprocal and otherwise) and provides mechanism for maintenance of private streets, utilities, stormwater management, and other common facilities and infrastructure upon which lots created under this application are dependent in perpetuity. Said document(s) to receive satisfactory review by Town Counsel prior to signature and recording;
5. Monuments to be set on the plat and in the field and certified as such by a NH Licensed Land Surveyor to be set and documented to the Town within 18 months of this approval and shall be noted on the plan prior to recording;
6. Lot revisions to the plans as noted by Keach-Nordstrom report dated March 11, 2021 shall be corrected on the plan.

Motion: S. Babin

Second: K. Waters

Discussion: Mr. Sabourn asked if the bonding concern should be addressed or discussed. Mr. Babin stated he will discuss with Town Counsel and report back to the Board.

Roll Call Vote: 5 YES - 0 NO - 0 ABSTAIN

Motion passes.

3. APPLICATION/PUBLIC HEARING –Site Plan Review: Hotel Village and Lake Road/Access Road Realignment; Marc Burnell as agent for LCJ Holdings, LLC, Route 175, Owl's Nest Resort. [Map 16 Lot 1-7]

The Board reviewed all plans and reports submitted. The Board reviewed the conditional approval notes made by Ms. Menici and Mr. Keach.

MOTION: "To accept the Site Plan Application: Hotel Village; John Warzocha as agent for LCJ Holdings, LLC, Route 175, Owl's Nest Resort. [Map 16 Lot 1-7] as substantially complete."

Motion: S. Babin

Second: F. Freeman

Discussion: None

Roll Call Vote: 4 YES - 0 NO - 1 ABSTAIN

Motion passes.

Mr. Babin opened public hearing. No public comment was made. Mr. Babin closed the public hearing.

MOTION: "To approve the Site Plan: Hotel Village; John Warzocha as agent for LCJ Holdings, LLC, Route 175, Owl's Nest Resort. [Map 16 Lot 1-7] subject to the following conditions:

1. Amended NH-DES Alteration of Terrain Permit, with a note added to the final plan with the NH-DES approval number;
2. NH-DES Water Supply Engineering Bureau approval of planned community water system improvements, with a note added to the final plan with the NH-DES approval number;
3. NH-DES Construction Approval for on-site subsurface wastewater disposal systems for each of the proposed villas, with a note added to the final plan with the NH-DES approval number;
4. Receipt and satisfactory review by Planning Board Legal Counsel of existing and proposed easements benefitting improvements approved as part of this application;
5. Receipt and satisfactory review by Keach-Nordstrom Associates, Inc., of amended drainage calculations; planning and design comments listed in the Keach-Nordstrom Associates, Inc. report dated March 11, 2021 (numbered 1-12) will be included;
6. Note to be added to the final plan set to the typical road cross-section provided on Sheet D1.4.: "All workmanship and materials to be incorporated in roadway, drainage and utility construction shall conform with Standard Specifications for Road and Bridge Construction (latest edition) as published and amended by the NH Dept. of Transportation.

Motion: F. Freeman

Second: K. Waters

Discussion: None

Roll Call Vote: 5 YES - 0 NO - 0 ABSTAIN

Motion passes.

4. Continuation of APPLICATION/PUBLIC HEARING -- Site Plan Review: Sunrise Nanos - J, K, L; Marc Burnell as agent for LCJ Holdings, LLC, Lafayette Road. [Map 16 Lot 1-7SROC]

MOTION: "To continue the APPLICATION/PUBLIC HEARING -- Site Plan Review: Sunrise Nanos - J, K, L; Marc Burnell as agent for LCJ Holdings, LLC, Lafayette Road. [Map 16 Lot 1-7SROC] to the April 15, 2021 meeting."

Motion: F. Freeman

Second: K. Waters

Discussion: None

Roll Call Vote: 5 YES - 0 NO - 0 ABSTAIN

Motion passes.

5. Continuation of APPLICATION/PUBLIC HEARING – Minor Site Plan Review: Slice Restaurant; Marc Burnell as agent for LCJ Holdings, LLC, Lafayette Road. [Map 16 Lot 1-8]

MOTION: “To continue the APPLICATION/PUBLIC HEARING – Minor Site Plan Review: Slice Restaurant; Marc Burnell as agent for LCJ Holdings, LLC, Lafayette Road. [Map 16 Lot 1-8] to the April 15, 2021 meeting.”

Motion: F. Freeman

Second: K. Waters

Discussion: None

Roll Call Vote: 5 YES - 0 NO - 0 ABSTAIN

Motion passes.

OTHER BUSINESS:

1. Review: Draft of Site Plan Application and Checklist

The Board reviewed the drafts submitted by Ms. Menici. Ms. Menici stated the draft documents will aid the applicants and planning department in submitting and processing applications. Ms. Menici stated she will draft applications for the sub-division application as well.

Mr. Babin thanked Ms. Menici for her work on preparing the documents for review. Mr. Babin suggested the Board review the documents. He suggested a work session be held prior to the April meeting to be able to adopt the documents.

2. Board Vacancies

Mr. Babin stated there is one (1) vacancy for an alternate on the Board, and possibly one (1) member vacancy. He stated Mr. Laufenberg has been elected as a Selectman, and the Ex-Officio seat may change hands as there cannot be two (2) Selectmen on a Board; Mr. Sabourn is the current Ex-Officio on the Planning Board. The Board of Selectmen (BOS) will meet on March 24, 2021 to elect officers.

Mr. Babin stated following the BOS meeting, the number of alternate and member positions for the Planning Board shall be determined. Mr. Babin stated he will contact the current alternates following the BOS meeting.

Mr. Babin acknowledged Mr. Sabourn for his unwavering support as a member of the Planning Board. Mr. Sabourn stated he is lucky to be involved with the Board and community and thanked the Board.

ADJOURNMENT:

MOTION: “To adjourn at 8:23 p.m.”

Motion: S. Babin

Second: D. O'Donnell

Discussion: None

Roll Call Vote: 5 YES - 0 NO - 0 ABSTAIN

Motion passes.

Respectfully Submitted,

Kerrin Randall, Board Assistant