

## TOWN OF THORNTON PLANNING BOARD

Approved on: 21 Jan 2021  
PB Initials: SB  
Rec'd by Town Clerk on: 1/25/2021  
Town Clerk Initials: dpm

### Planning Board Meeting Minutes Thursday, November 19, 2020

**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:** Nancy Decoteau (entered at 6:30 p.m.), Peter Laufenberg, Donna O'Donnell, Karen Waters, Roy Sabourn, Kerrin Randall; Assistant to the Planning Board

**Members not present:** Frank Freeman, Vice-Chairman

**Alternates present at Town Hall:** Fred Gunter, David Rivers

**Members present via call-in:** Steven Babin; Chairman, Kathy Menici; Planning Director, Town of Thornton

**Alternates present via call-in Members/Alternates absent:** Gloria Kimball, Julie Piehn, Cynthia Schofield

**Others present via call-in (partial names are as they appeared via Zoom):** Matt Serge; Attorney for Planning Board, Alexis Eynon, Andrew White, Austin Dodge, Brett Owngs, Cher Duffield, Dana Buck, Joe Monti, Brian Regan, Emily Eynon, Fernando Quello, Gale Beckwith, Howard Brookner, James Sununu, Janet Capaul, Jeff Scholtz, Jeremy Duffield, Jonathan Grebow, Juan, Karen Walsh, Marc, Marcia King, Maryellen Sakura, Mike Plotnick, Myrtle Lewis, Nancy, Pat, Ray Newton, Richard Hage, Rick Virtus, Russ Roth, Sandra Kingston, Stephen Kelleher; Vertex, T. Aldridge, Thomas, Tom Johnson; Engineer, Vertex

**Others present at Town Hall:** Sally Davis, Steve Kenney, Philip Hastings; Attorney for Owl's Nest, David Kelley, Kathleen Kelley, Richard Linck, Sandra Linck, Francis Parisi; Vertex Tower Associates, B. McCoil, John Warzocha; Horizon's Engineering for Owl's Nest

Mr. Babin appointed Mr. Laufenberg to sit in the Chairman's position to aid in the facilitation of the meeting, as Mr. Babin was present via Zoom.

Mr. Laufenberg appointed Mr. Gunter to sit in as an alternate on the Board.

#### APPROVAL OF MINUTES:

1. Upon distribution and review of the meeting minutes of October 15, 2020, the members took the following action:

**MOTION: "To accept and approve the Minutes of the Thursday, October 15, 2020 meeting."**

Motion: Mr. Laufenberg

Second: Mr. Gunter

Discussion:

Mr. Sabourn stated he sent minor grammatical changes to Ms. Randall. Ms. Randall stated that she had updated the grammatical changes.

Roll Call Vote: 5 YES -0 NO -1 ABSTAIN (Ms. O'Donnell)

Motion passes.

**PRELIMINARY BUSINESS:**

Welcome Kathy Menici, Planning Director

Mr. Babin welcomed Ms. Menici. He stated that she comes with years of experience, and that the Board looks forward to working with her for a long time.

**COMMUNICATIONS:** None

**REPORTS:** None

**UNFINISHED BUSINESS:** None

**HEARINGS:**

1. 6:15 p.m. 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] with access on Treeline Road [Map 12 Lot 5-9]

Mr. Parisi entered the meeting at 6:16 p.m.

Mr. Babin stated that it would be appropriate for the Board to know that the application is substantially complete and can be voted on it as such. He stated the Board can accept the application substantially complete and allow for a public hearing and comment. He stated the Board will not be able to take further action than that on the application tonight.

Mr. Laufenberg stated the application has not been accepted yet; once it is accepted as complete the meeting will open for public comment with the understanding that no further action will be taken. He stated the truth of matter is that the Planning Board cannot do anything until the Zoning Board of Adjustment decision is reviewed. Mr. Laufenberg stated the concept is to accept the application as substantially complete, knowing there is pending issues.

**MOTION: "To accept the Site Plan Review application as substantially complete; as submitted by 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] with access on Treeline Road [Map 12 Lot 5-9]."**

Motion: Mr. Sabourn

Second: Mr. Gunter

Discussion: None

Roll Call Vote: 6 YES -0 NO -0 ABSTAIN

Motion passes.

Mr. Laufenberg opened the meeting for comment.

Mr. Parisi stated since the last meeting Vertex has heard from Verizon, who is interested in space on the tower. He stated at both the Planning and Zoning Boards, abutters expressed concern with the access on Treeline Road.

Mr. Parisi stated over last month he has had substantial discussions with abutters on Upper Mad River Road. He stated that an alternative access is in process of being designed off Upper Mad River Road with substantial improvements on the road. He presented a preliminary plan and stated that this plan does not rise to the level of detail needed for a Site Plan Review.

Mr. Parisi stated he wants the board and everybody to know that this new access is a significant and expensive change. He stated the land is sloped and, to build road that's passible, extensive switchbacks will be needed. He stated the slopes will still exceed those that Vertex is comfortable with, but their engineers are looking at it.

Mr. Parisi stated substantial wetlands were found on the existing logging road that would be used as access to the site. He stated they would have to obtain new wetland crossing permits and will be required to get an Adjustment of Terrain (AOT) permit from the New Hampshire Department of Environmental Services (NHDES).

Mr. Parisi stated Vertex got the impression that the access road is more of a concern than the tower; the change in access is leading down an expensive road. He stated what he wants to accomplish tonight is to know if the application will be approved with the change in access; he stated Vertex does not want to spend time and money reengineering roads if it is going to be denied.

Mr. Laufenberg stated the Board is not going to guarantee anything. He stated at this point the application was been accepted as substantially complete. Mr. Laufenberg stated the Planning Board is not going to decide anything further until the Zoning Board renders their decision on the waiver and variance requests.

Myrtle Lewis, Chair of the Thornton Conservation Committee, stated she would appreciate a walkthrough with Mr. Parisi. She stated the sooner the Committee gets involved, the sooner they can look at the issues in question. She stated the Committee wants to be able to work together.

Mr. Laufenberg asked that Tom Johnson, Engineer with Vertex, and Ms. Lewis get in touch to discuss the engineering aspects with the Conservation Committee.

Mr. Sabourn stated he was pleased that Vertex is looking at other access.

Board member Nancy Decoteau arrived in the meeting room at 6:30 p.m.

Mr. Laufenberg asked for public comment.

Alexis Eynon, Upper Mad River Road, stated she is opposed to every aspect of this project. She stated Vertex is a corporation that is trying to get permits and variances on part of the Mad River Water Shed and that it cannot happen.

Emily Eynon, Sugar Run, stated she has no interest in having any of this in the neighborhood. She stated it does not matter where the access or tower is; it is a neighborhood. She stated she has an issue with wetlands coming into play as well.

Cher Duffield, Upper Mad River Road stated she is against a tower no matter where it is; it does not keep with the spirit of the community. She stated the Board has a sacred duty to preserve the land; once something like this is done, it is done forever. She stated unless the town will benefit with revenue or an endowment to offset resources being disturbed, it should not happen. Ms. Duffield stated hearing name of the owner of land where the tower will be leaves a bad taste in her mouth. She stated if Waterville Valley needs cell service, Waterville Valley needs to do something about it, not Thornton.

Jeremy Duffield, Upper Mad River Road, stated he lives in the original Sugar Run house. He stated that his background displayed on his Zoom call is from Route 49 looking out at Cone Mountain. He stated Cone Mountain is the first thing you see, and that people live here for nature. Mr. Duffield stated no one wants a cell tower on Cone Mountain. He stated SVC realty will have a hidden agenda, as it is a huge place. Mr. Duffield

stated Vertex would be breaking a restrictive road use convenience from 1968. He stated they do not need it and they do not want it.

Howard Brookner, Sugar Run, stated he is near retirement and bought property in the best place in New Hampshire. He stated he does not agree with anything that is potentially being allowed. He stated a cell tower is ugly, and to even think to put one on the edge of a National Forest is despicable

Dana Buck, High Brook Road, stated he does not want a tower in the neighborhood. He stated there will be traffic, construction, and altering of the land; the beauty of area will be destroyed.

Maryellen Sakura, Rivendell Way, stated she thinks we have as beautiful an area of Sugar Run as there is. She stated there is a hidden problem that no one has brought up. She stated she will speak to it because before coming up, she lived in Arlington, Massachusetts in a block surrounded by cell towers. She stated she could rarely use a cell phone in her home, as the calls would drop consistently. Ms. Sakura stated cell phone calls routinely get dropped when near a tower. She stated she is concerned that people will have intermittent service, and that it will be a headache for those who live within two (2) miles of the tower. She stated engineers can speak and can contradict her statement, but she has experience.

Austin Dodge, Cold Springs Road and Sugar Run, stated access would go directly by his house, and he does not want the area destroyed by vehicles. He stated drainage, depending on the time of year will be a mess as roads will be washed away. Mr. Dodge stated any impact on roads in the area could be devastating. He stated the character of the area does not jive with a cell tower.

Kathleen Kelley, Treeline Road, stated she and her husband have consulted with attorneys, on their dime, and put a memorandum together that they presented to the Board. She stated they are very much against the tower and have hopes of building their dream home in Thornton. Ms. Kelley asked why the location in question is still on the table, as they are talking about intrusion on residential land, obstructed views from the Welch-Dickey trail, and drainage issues. She stated she went up Welch-Dickey on a Tuesday and obtained 41 signatures from hikers against the tower. Ms. Kelley stated the tower will affect people coming to NH, as people go to the mountains to get away from cell towers.

Ms. Kelley stated there are other locations a tower could go. The proposed site does not help Thornton; it helps Route 49 to Waterville Valley. She stated that the carrier you have will determine if you get coverage on Route 49. She stated she currently lives in a town where there are towers and small cell devices, and calls get dropped in her kitchen. She stated companies are moving north because there is no room left.

Ms. Kelley stated the balloon test done in the fall was for three (3) hours in the middle of the week; people could not see it as they were working. She stated the pictures of the test were taken from the road, and do not accurately show where the balloon would be from properties. She stated she will see the tower from her property once it is cleared to be buildable; this is not what she intended in coming to Thornton. She stated the tower does not belong in a neighborhood. She stated she feels there is a connection between the proposed build lot and the Sununu Family and that is why the site was chosen.

Mr. Laufenberg stated that the residential zoning and height concerns are for the Zoning Board to discuss. He stated he will hear the concerns, but those two items are for the Zoning Board to decide. Mr. Laufenberg stated the Planning Board would decide on the pad site, drainage, and the access road. He stated when talking about building commercially in residential zones, this violates the zoning ordinance and then goes to the Zoning Board for a waiver. Mr. Laufenberg stated Vertex came and presented an application that the Board is obligated to accept as completed, as the application is filled out properly.

Ms. Kelley stated in the 1980s, the Sununu Family owned the proposed site lot and basically raped the land by logging it. She stated that a 'stump dump' was made in the middle of the land because of the logging. She stated when that happens wetlands can be created with the natural streams, and then made worse. Ms. Kelley stated that

Vertex is taking piece of land that is already damaged and are talking about damaging it again. She stated there are deer that winter over in the area, and that the wildlife in the area will be significantly impacted.

Mr. Laufenberg stated that Mr. Parisi has stated numerous times why the location in question was picked.

Mr. Parisi stated the landowners have nothing to do with the tower, as Vertex approached them and other surrounding landowners; they were the only ones that responded. He stated Vertex is trying to be accommodating in redesigning and moving the access road.

Gale Kent, Sugar Run, asked how the tower and access road will this affect taxes in Thornton, as there will be additional travel and maintenance on roads. Mr. Sabourn stated Upper Mad River Road is a public highway, and drivers have a right to use heavy equipment on it. He stated there will be tax revenue from the structure if built, but beyond that he cannot give information.

Fernando Quello, Sugar Run, stated it is not appropriate to have a tower in Thornton, and that utilities above ground will not be good for anyone, as trees may fall on them and cause power failures to parts of town.

Sally Davis, Sugar Run, stated she has reviewed the submitted paperwork from Mr. Parisi and asked if an Environmental Protection Agency (EPA) was needed. She stated that she is also concerned that the tower will not be required to be lit at night, as she contacted the Vermont Air Guard to verify that their planes fly in the area for training. She stated that the Air Guard seemed concerned about a tower at that height not being lit.

Mr. Parisi stated that extensive permitting is done prior to construction. He stated that if the Board approves the Site Plan, there will still need to be substantial environmental studies and permitting needed to be completed prior to construction. Mr. Parisi stated that if there are any permitting issues from the State or Federal level, the tower cannot be built.

Bill Buck, High Brook Road, stated that everyone understands the Board's responsibility in looking into the tower and considering it. He stated that all environmental decline happens incrementally, often with good intentions and people are concerned with that.

**MOTION: "To close the public comment portion of the meeting."**

Motion: Mr. Sabourn

Second: Ms. O'Donnell

Discussion: None

Roll Call Vote: 6 YES -0 NO -0 ABSTAIN

Motion passes.

**MOTION: "To continuation the 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] with access on Treeline Road [Map 12 Lot 5-9] at the December 17, 2020 meeting at 6:00 p.m."**

Motion: Mr. Babin

Second: Mr. Gunter

Discussion: None

Roll Call Vote: 6 YES -0 NO -0 ABSTAIN

Motion passes.

Mr. Babin stated that he was informed that specific times assigned for hearings are not needed, and that the applicants will be heard in the order placed on the agenda.

2. 6:45 p.m. APPLICATION/PUBLIC HEARING – Subdivision Review: Northside/Lakehouse Lot; Marc Burnell as agent for LCH Holdings, LLC, Route 175, Owl's Nest Resort. [Map 16 Lot 1-7]

John Warzocha, Horizons Engineering, entered the meeting at 7:12 p.m. He presented a new application with modifications requested by the Board at the last meeting.

Ms. Menici stated she prepared a summary of comments on the application and sent a copy to Matt Serge, Planning Board attorney. Ms. Menici summarized her concerns:

- There is a previously submitted Site Plan.
- If approved, this subdivision will create a new parcel, and previous site plan approval will become null and will need to go through site plan review again for that area.
- There was no copy of the easement with Eversource included
- The proposed continuation of Lafayette Road comes to a dead end at town owned property and there would need to be some type of turnaround at the dead end.

Discussion ensued regarding a turnaround at the dead end of Lafayette Road. Mr. Warsoko stated that a turnaround will be shown at the Site Plan review, and that they are only asking for a subdivision of land at this time.

Philip Hastings Attorney for Owl's Nest suggested the Board could provide conditional approval with a turnaround shown to approve the application at this meeting.

Mr. Laufenberg asked for public comment; there was none.

Mr. Laufenberg asked for comments from the Board.

Mr. Sabourn stated he does not want to give conditional approval. He stated in the past we've always required roadways to show turnarounds per town specifications. Mr. Sabourn stated the State needs to provide approval on a subdivision less than five (5) acres.

Mr. Hastings stated towns can approve applications with the conditions of state approval needed. Mr. Babin asked Mr. Serge if conditional approval could be given without State subdivision permit approval. Mr. Serge stated that conditional approval could be given, but that was the decision of the Board, but it is standard that there can be requirements pending state approvals.

**MOTION: "To close the public comment portion of the meeting."**

Motion: Ms. Waters

Second: Mr. Gunter

Discussion: None

Roll Call Vote: 7 YES -0 NO -0 ABSTAIN

Motion passes.

Discussion ensued regarding the granting conditional approval.

Ms. Menici stated she will work on the conditions needed to be met for the Board to grant conditional approval. She asked that this be tabled until later in the meeting to prepare her notes.

**MOTION: "To table the APPLICATION/PUBLIC HEARING – Subdivision Review:**

**Northside/Lakehouse Lot; Marc Burnell as agent for LCH Holdings, LLC, Route 175, Owl's Nest Resort. [Map 16 Lot 1-7] to later in this meeting."**

Motion: Ms. O'Donnell

Second: Ms. Waters

Discussion: None

Roll Call Vote: 7 YES -0 NO -0 ABSTAIN

Motion passes.

3. 7:15 p.m. APPLICATION/PUBLIC HEARING – Subdivision Review: The Meadows II; Marc Burnell as agent for LCH Holdings, LLC, Lafayette Road. [Map 16 Lot 1-7MDCO]

Mr. Warzocha stated this application is for the Meadows Condominiums. He stated the intent is to subdivide the lot and review the Site Plan following the approval of this application. Mr. Warzocha stated state subdivision approval will also be needed and asked that the Board consider conditional approval as proposed for the previous application.

Discussion ensued regarding granting conditional approval.

Mr. Laufenberg asked for public comment; there was none.

**MOTION: “To close the public comment portion of the meeting.”**

Motion: Ms. Waters

Second: Ms. O'Donnell

Discussion: None

Roll Call Vote: 7 YES -0 NO -0 ABSTAIN

Motion passes.

**MOTION: “To accept the Subdivision Application: The Meadows II; Marc Burnell as agent for LCH Holdings, LLC, Lafayette Road [Map 16 Lot 1-7MDCO] as substantially complete.”**

Motion: Ms. Waters

Second: Ms. O'Donnell

Discussion: None

Roll Call Vote: 7 YES -0 NO -0 ABSTAIN

Motion passes.

Ms. Menici stated she would like to see a clean subdivision plan that shows the property lines only. Mr. Warzocha stated he will provide that.

Ms. Menici stated, ideally the applicant would be submitting a plan set that would be two (2) sheets:

1. To include structures, landmarks, and facilities to see how everything relates.
2. A recording sheet with boundaries of approved lots.

Mr. Warzocha stated that he will provide two (2) sheets moving forward with future applications.

**MOTION: “To approve the Subdivision Application: The Meadows II; Marc Burnell as agent for LCH Holdings, LLC, Lafayette Road [Map 16 Lot 1-7MDCO] with the following conditions:**

- Amended plan showing the existing septic plan for the Meadows buildings be provided to the Board.
- State Subdivision permits shall be obtained within 60 days.
- Proof of approval of necessary State permits shall be provided to the Board.

Motion: Ms. O'Donnell

Second: Mr. Gunter

Discussion: None

Roll Call Vote: 7 YES -0 NO -0 ABSTAIN

Motion passes

3. 7:45 p.m. APPLICATION/PUBLIC HEARING – Site Plan Review: The Meadows II; Marc Burnell as agent for LCJ Holdings, LLC, Lafayette Road. [Map 16 Lot 1-7MDCO]

Mr. Warzocha presented plans for a 10-unit building at The Meadows and asked the Board for questions.

Mr. Babin stated the Board is asking for the Land Dedication Agreement (LDA) on Site Plan reviews. He stated he appreciates that Attorneys Serge and Hastings have been looking at the LDA.

Mr. Babin stated there is quite a lot of work that the Board needs to do with the applicant to address dwelling units, as there is a disagreement with numerical values regarding the definition of a dwelling unit. He stated the plan submitted has 10 rentable units that, if being described as a dwelling, would affect the LDA. Mr. Babin stated if the proposed units are considered hotel units, then the percentage of space taken per the LDA is different than a dwelling unit.

Mr. Babin asked if the 10 units will be the LDA by 10, as dwellings are a 1:1 ratio. Mr. Hastings stated, no; the interpretation is that the units are rentals, not dwellings.

Mr. Babin reviewed the language of a dwelling unit, per the Town of Thornton Zoning Ordinance:

**Dwelling Unit means an independent housekeeping unit used for residential occupancy by one family. The unit is physically separated from any other residential space and contains its own independent sleeping, cooking and sanitary facilities.**

Mr. Babin stated what he sees on the submitted plan meets the definition of dwelling unit. He stated there is room to adjust the name of a unit that has 10 places that have sleeping quarters, but if they meet the definition of a dwelling, it cannot be treated as another type of unit.

Mr. Hastings stated he does not disagree with the approach to the ordinance; the disagreement is what is defined as a dwelling unit. He stated the units will be more akin to a hotel.

A lengthy discussion ensued regarding what the definition of a dwelling unit is.

**MOTION: "To accept the Site Plan Application: The Meadows II; Marc Burnell as agent for LCJ Holdings, LLC, Lafayette Road. [Map 16 Lot 1-7MDCO] as substantially complete."**

Motion: Ms. Decoteau

Second: Ms. Waters

Discussion: None

Roll Call Vote: 7 YES -0 NO -0 ABSTAIN

Motion passes

Ms. Menici stated she spoke with Counsel, and in his opinion that if the proposed units contain all of the characteristics of a dwelling as defined by the zoning ordinance, then the LDA would have to be amended accordingly. She stated State approvals are needed as well.

Mr. Babin asked if the proposed unit will have a fire prevention sprinkler system. Mr. Warzocha stated this will be addressed with fire chief

**MOTION: "To continue discussion of the Site Plan Application: The Meadows II; Marc Burnell as agent for LCJ Holdings, LLC, Lafayette Road. [Map 16 Lot 1-7MDCO] at the December 17, 2020 meeting."**

Motion: Mr. Laufenberg

Second: Ms. Waters

Discussion: None

Roll Call Vote: 7 YES -0 NO -0 ABSTAIN

Motion passes

**REVISIT OF TABLED APPLICATION/PUBLIC HEARING – Subdivision Review: Northside/Lakehouse Lot; Marc Burnell as agent for LCH Holdings, LLC, Route 175, Owl's Nest Resort. [Map 16 Lot 1-7].**



Mr. Laufenberg asked Ms. Menici for her thoughts on the conditions for approval. Ms. Menici suggested the following conditions be added for approval:

- All necessary State permits approval
- Copies of all easements on the subject property; Eversource and Town of Thornton be provided.
- Engineered road plans are to be reviewed and approved before any construction can begin.
- Site plan review for amenities area and lakeside, to include newly formed 1-acre lot.

**MOTION: "To accept the Subdivision Application: Northside/Lakehouse Lot; Marc Burnell as agent for LCH Holdings, LLC, Route 175, Owl's Nest Resort. [Map 16 Lot 1-7] as substantially complete."**

Motion: Ms. Waters

Second: Ms. O'Donnell

Discussion: None

Roll Call Vote: 7 YES -0 NO -0 ABSTAIN

Motion passes.

**MOTION: "To Approve the Subdivision Application: Northside/Lakehouse Lot; Marc Burnell as agent for LCH Holdings, LLC, Route 175, Owl's Nest Resort. [Map 16 Lot 1-7] with the following conditions:**

- All necessary State permits approval provided.
- Copies of all easements on the subject property; Eversource and Town of Thornton be provided.
- Engineered road plans are to be reviewed and approved before any construction can begin.
- Site plan review for amenities area and lakeside, to include newly formed 1-acre lot."

Motion: Ms. Waters

Second: Ms. O'Donnell

Discussion: None

Roll Call Vote: 6 YES -0 NO -1 ABSTAIN

Motion passes.

#### **OTHER BUSINESS:**

Excavation Permit Renewal Request – Andrews Construction

Ms. Menici requested more time to review the permit request; the applicant's permit does not expire until the end of December. She stated she wants to be fair to the applicant and provide adequate review.

**MOTION: "To table discussion of the Excavation Permit Renewal Request – Andrews Construction to the December 17, 2020 meeting."**

Motion: Ms. O'Donnell

Second: Ms. Waters

Discussion: None

Roll Call Vote: 7 YES -0 NO -0 ABSTAIN

Motion passes

#### **ADJOURNMENT:**

**MOTION: "To adjourn at 8:53 p.m."**

Motion: Mr. Gunter

Second: Ms. Waters

Discussion: None

Roll Call Vote: 7 YES -0 NO -0 ABSTAIN

Motion passes.

Respectfully Submitted,

Kerrin Randall, Board Assistant