

FINAL

LEBANON PLANNING BOARD
Council Chambers, City Hall
Monday, January 28, 2019
6:30 PM

MEMBERS PRESENT: Keith Davio (Chair), Bruce Garland (Vice Chair), Matthew Hall, Gregory Schwarz, Sarah Welsch, Karen Zook (Council Representative), Kathie Romano, Matthew Cole (Alt.)

MEMBERS ABSENT: Joan Monroe, Laurel Stavis, and Jim Winny (Alt. Council Representative)

STAFF PRESENT: David Brooks (Planning and Zoning Director, Tim Corwin (Zoning Administrator), Rebecca Owens (Associate Planner)

1. **CALL TO ORDER – Chair Davio called the meeting to order at 6:30 PM.**
 - Ms. Kathie Romano was welcomed as a regular member on the Board.
 - For the purposes of this meeting, Mr. Matthew Cole will replace Ms. Laurel Stavis in her absence.

2. **APPROVAL OF MINUTES: None**

3. **PUBLIC HEARING: CONTINUED FROM 1-14-19**
 - A. **PATCH FOREST, LLC, 0 MERRY LANE (TAX MAP 194, LOT 25), ZONED RL-3:**

The property is a vacant lot identified as a “Recreation Area” on the plat for the Ben Wood Development, a Major Subdivision approved by the Planning Board on April 24, 1984. The applicant requests an amendment to the approval and plat for the Ben Wood Development to allow 0 Merry Lane to be used for agriculture and the storage of agricultural equipment.
#PB2018-38-FMAJ

Chair Davio opened the Public Hearing.

Mr. Matthew Cole was recused from this discussion.

Chair Davio reminded everyone that this is a continuance from the January 14, 2019 meeting and all pertinent materials can be found in the agenda packet for this meeting. He requested that since testimony was given at the January 14, 2019 meeting, only new information should be presented.

Public Comments:

Attorney Bradford Atwood, representing Patch Forest LLC (Matthew and Barbara Patch and their three sons, Joshua, Arthur and Cody), provided the Board a follow-up letter dated January 18, 2019 in response to the Board’s January 14, 2019 meeting. Included with his letter were some additional documents (listed below) that had not been previously submitted by the applicant and were included, in their entirety, in the agenda packet for this meeting:

- Warranty Deed from K & J Associates to the City of Lebanon dated November 16, 1988.
- Warranty Deed from Couillard to Eric and Marjorie Bish dated June 28, 1996.
- Protective Covenants of K & J Subdivision, City of Lebanon (Grafton County), New Hampshire dated October 5, 1987.
- Information from the Patch’s regarding their sap gathering operation titled “Memorandum to Lebanon Planning Board.”

Mr. Eric Bish, abutting landowner to Patch Forest LLC, stated he only received the follow-up documents prepared by the applicant’s counsel this evening at 6:00 pm. He handed out a 10-page document (not part

of the agenda packet) to the Board and shared some of his additional comments in follow-up from the January 14, 2019 Public Hearing.

His documents included:

- Page 1: Notice of Decision, prepared by the City of Lebanon, for K&J Associated for the final review of the major subdivision, dated April 24, 1984. He quoted the portion of this document, which stated, *“A 4-acre open space shall be provided behind lots 7 & 11 for recreation purposes”* and presented his interpretation of this document.
- Page 2: Memorandum from Kenneth Niemczyk (City Planner) to Kathy Casale (Assessing Clerk) dated March 25, 1996, regarding the Ben Wood Development, K&J Associates, Map 194-25. Mr. Bish read the Memorandum to the Board, noting the reference to: *“The Subdivision Regulations and the Notice of Decision do not require that the developer deed the recreational tract to the City. The regulations and the decision require that an area for recreation be provided, which the developer did.”*
- Pages 3 & 4: Warrantee Deed conveyed to K&J Associates by Deed of Ruth Foster dated June 1, 1984 and recorded in the Grafton County Registry of Deeds in Book 1507, page 725, conveying all and the same land and premises conveyed to Edwin J. Couillard and Jayne Couillard by Warranty Deed of Walter J. Patterson, Betty L. Paterson, Ronald F. Decato and Patricia L. Decato dated November 19, 1993 and record in the Grafton County Registry of Deeds at Book 2061, Page 298 on June 28, 1996, and received by the Grafton County Registry of Deeds on July 2, 1996. Mr. Bish stated there is reference to the recreational area on the plat, and their property adjoins and abuts that recreation area (253 ft.) but does not included Deeded rights to the recreational area.
- Page 5: Map of Subdivision, which included a recreational area. (Questionable if this was a 1984 or 1987 map).
- Page 6: Copy of a Public.net City of Lebanon, NH summary of parcel ID 194-25.
- Pages 7, 8, 9 & 10: Copy of the Protective Covenants of K&J Subdivision, City of Lebanon (Grafton County), New Hampshire, received by the Grafton County Registry of Deeds on October 6, 1987. Mr. Bish read parts of this document to the Board and presented his interpretations of this document.

Mr. Steve Mumley (481 Meriden Road) came before the Board stating he and his wife, Joanne, have been part of the Ben Wood Development for 30+ years. He was not part of the first meeting because he did not know about it. His understanding was there was a plot of land set aside for recreational purposes and he and his family have used the (questioned) recreational area for skiing, snowshoeing and walking. He expressed his concern that everything is now posted as a keep out.

Hearing no further comments from the public, Chair Davio closed the Public Hearing.

Board Deliberations:

Chair Davio asked who put the Protective Covenants in place. Mr. Corwin said that in 1987 the plan originally approved in 1984 was revised. In between the recording of the originally approved subdivision in 1984 and the recording of the revised plan in 1987, four (4) of the lots in the original subdivision were sold. The Deeds for these lots have two (2) Covenants, and they appear to be identical in each of their Deeds. When the plan was revised and recorded in 1987, a set of covenants generated by the owner of the property at that time (K&J Associates) was recorded and was to be attached to the remainder of the unsold lots in that subdivision. These were private documents with privately enforceable restrictions.

The Board did not refute the fact that there should be a recreation area for the subdivision, as per original documentation, but Chair Davio questioned whether this recreation area should remain where it is or if it could possibly be relocated to somewhere else on the property.

Attorney Atwood reiterated that the recreational area was just a placeholder because it was going to be attached to a proposed future subdivision, explaining his interpretations regarding what the subdivision's

intentions were at the time. He read the Subdivision Regulations that were in effect at the time (Section 509 of the Subdivision Regulations) to the Board and noted that two things needed to happen, which were: 1) The recreation area needed to be Deeded to the City, or 2) Reserved for the common use of all property owner's by Covenant in the Deed as determined by the Board. Neither of those things happened. This was a subdivision that failed. There was no follow through. A place holder was put on this 3.9-acre recreation area, but nothing was ever Deeded to the City and nothing was ever Deeded to the other lot owners.

At the Boards request, Mr. Brooks said that the decision voted on in the past stated "*a 4-acre open space shall be provided behind lots 7 & 11 for recreation purposes,*" so the applicant created a 4-acre lot behind lot 11. It could have been behind lot 7 or the difference split to create space behind both of them. This cannot be disputed. Whether people have known about it for 30-years, consciously or unconsciously, the fact is that it was required and it (recreational area) was provided. Whether it was intended to be a placeholder in anticipation of a larger development is irrelevant. It was required by the (original) application and it never got superseded by a larger development. He had no explanation of why the ball got dropped and was never Deeded to the City or why a Home Owner's Association was never created.

Chair Davio said that, in his opinion, this recreational area should exist based on the original decision but agreed with Attorney Atwood that Patch Forest LLC has a right to waive that decision.

The Board had lengthy discussions and questions regarding:

- Whether the 3.9-acre recreational area could be moved elsewhere on the property.
- Use of the property over the past 30 years;
- How the property was taxed and who paid the taxes on this lot: the 3.9-acre lot has been taxed as a house lot with taxes paid by the owner(s), not paid by abutting land owners.
- Was an HOA (Home Owner's Association) was ever formed: No.
- The Recorded Subdivision Plan(s).
- Who has legal access to use the property.
- 0 Merry Lane access to property.
- The topography and usability of the property.
- Relocation or camouflaging the Conex box, which included the Conex box's access to electricity and the accessibility for sap pick-up.
- The Bish family's use of the property.
- Use of the property for agricultural purposes.
- Restrictions/subdivision regulations that may apply.
- Snowmobile use on the 900-acre property.
- It was also noted that Patch Forest LLC has only owned the entire 900-acre property for 1-year and their intention was to keep this property for agriculture use.

Mr. Corwin informed the Board that there are restrictions that apply to the use of this lot pursuant to the Subdivision Regulations that were in effect at the time the plan was originally approved and at the time it was revised. The Board should be aware that it is the City's attorney's opinion that the other owners of the subdivision hold an interest in this 3.9-acre lot and that is why the planning staff was required to notify all property owners of the subdivision about this Public Hearing. The question of whether there is actual physical access to the lot to be used as a recreation area is unclear, yet the applicant has asserted that there is no such access for it to be used as recreational.

Attorney Atwood again read Section 509 of the Subdivision Regulations in effect at the time. Further discussions ensued regarding those particular regulations.

Chair Davio said, based from what he has seen, there is no legal means of public access for this lot and, from his prospective, the lot is unusable for anything and saw no reason why the lot should not be used for agricultural use given the state it is in. Further Board discussions took place regarding the lot's use for either a recreational or agricultural lot and how the land was used and taxed in the past.

The Board acknowledged that any decision made was going to be a difficult one but Option B, as presented in the agenda packet, was chosen as follows:

ACTIONS:

1. MOTION TO ACCEPT THE APPLICATION AS BEING COMPLETE:

Date: January 14, 2019

Matthew Hall moved that the Lebanon Planning Board finds the application of PATCH FOREST, LLC for an amendment to an approved Major Subdivision, #PB2018-38-FMAJ, is complete enough to accept jurisdiction and commence review.

The MOTION was seconded by Gregory Schwarz.

**The vote on the MOTION was unanimous in favor, 8-0.*

2. MOTION TO APPROVE THE APPLICATION:

Date: January 28, 2019

Matthew Hall MOVED that the Lebanon Planning Board APPROVE the application of PATCH FOREST, LLC, #PB2018-38-FMAJ, for an amendment to the approval and plat for the Ben Wood Development, a Major Subdivision approved by the Planning Board on April 24, 1984, to allow 0 Merry Lane (Tax Map 194, Lot 25), a vacant lot identified as a "Recreation Area" on the plat for the Ben Wood Development, to be used for agriculture and the storage of agricultural equipment, pursuant to any and all submissions and testimony provided for and during the public hearing, with the following conditions:

- 1. Pursuant to Section 7.15 of the Subdivision Regulations, the requirements of Section 514 ("Development of Open Space") of the Subdivision Regulations adopted October 19, 1981, and of Section 12.2.B.2 ("Undeveloped Open Space") of the current Subdivision Regulations adopted March 12, 2013 are hereby waived for the Ben Wood Subdivision (originally approved pursuant to a Notice of Decision dated April 24, 1984 and depicted on a plat titled "Ben Wood Development, K & J Subdivision", prepared by T & M Surveys, dated February 1984, last revised June 1, 1984, Proj. No. 161284, recorded in the Grafton County Registry of Deeds on July 9, 1984 as Plan #2191; and amended pursuant to a Notice of Decision dated June 25, 1987 depicted on a plat titled "Ben Wood Development, K & J Subdivision", prepared by T & M Surveys, dated February 1984, last revised June 1987, Proj. No. 161284, recorded in the Grafton County Registry of Deeds on September 28, 1987 as Plan #4546) to the extent necessary to allow 0 Merry Lane (Tax Map 194, Lot 25) to be used for agriculture, a permitted use in the RL-3 District pursuant to Section 314.2 of the Zoning Ordinance and defined in Appendix "A" of the Zoning Ordinance.*
- 2. All other conditions of the Planning Board's Notices of Decision dated April 24, 1984 and June 25, 1987 for the Ben Wood Subdivision shall remain in effect, including the subdivision open space requirements to the extent such requirements do not interfere with the agricultural use of 0 Merry Lane (Tax Map 194, Lot 25).*
- 3. A copy of the Notice of Action signed by the Planning Board Chair shall be acknowledged by the applicant and recorded in the Grafton County Registry of Deeds.*

The MOTION was seconded by Keith Davio.

The vote on the MOTION was approved by a vote of 6-1. Mr. Garland opposed.

Mr. Cole returned as a regular member of the Board.

4. STUDY ITEMS:

A. DISCUSSION AND ADOPTION OF UPDATED CIP POLICY AND PROCEDURES

Staff prepared a redlined draft of the Policy and Procedures for the Capital Improvement Program (CIP) based on a prior discussion for additional review by the Board. In the redline version, as presented in the agenda packet, staff attempted to use consistent terminology for the Planning Board, City Council, Municipal Departments and the Lebanon School District. In addition, the date of the budget submission to the City Council (on or before October 31st) has also been reference in the Article II, Policy Section as requested.

Mr. Brooks presented a newly revised CIP Policy and Procedures document to the Board describing the reasons behind his highlighted changes which were to incorporate comments from the Board and to clarify the policy definitions and budget issues further. He noted the Planning Board would be looking at projects related to the Master Plan Implementation and what would be needed to accommodate more growth, giving examples.

After further review, and comments from the Board, the following action took place.

Ms. Welsch MOVED to approve the amendments of the Updated CIP Policy and Procedures, as presented in the January 28, 2019 agenda packet and the highlighted changes presented by Mr. Brooks.

Seconded by Matthew Cole.

****The vote on the MOTION passed unanimously (8-0)***

B. REVIEW OF 2017-2019 CAPITAL BUDGETS TO COMMENCE 2020-2025 CIP PREPARATION

Mr. Brooks presented an in-depth excel spread sheet that was provided to him by the City's Finance Director. This spread sheet included the Capital Budget appropriations for the last three years (2017-2019) as well as the budgeted appropriations through 2022. Detailed explanations and examples were given on how the CIP Budget appropriations work and questions from the Board were answered. The purpose was to have the Board start looking at their CIP Project list and selecting their priorities, which would then be reviewed by the CIP Subcommittee. A discussion took place regarding the School Boards participation in the CIP process. Mr. Brooks anticipates bringing an abbreviated composite list of proposed projects back to the Board in February 2019.

No action was required. This was an informational session.

C. DISCUSSION RE: MASTER PLAN IMPLEMENTATION RESPONSIBILITIES

Ms. Owens handed out a Memorandum to the Board (not part of the agenda packet), noting that this document was a DRAFT Guide for the City of Lebanon's board/committee members and associated parties that would assign specific responsibilities for the implementation of the Master Plan Chapters, according to the Outcomes defined for each Chapter, and to empower boards/committees with more structure for implementing and updating the City's Master Plan.

Ms. Owens reviewed the following DRAFT Guideline topics with the Board as listed below:

- The Objective is to apply a more comprehensive and uniform approach to monitoring progress through clear accountability roles.
- Approach: Take steps for engaging boards/committees with their related responsibilities.
- LEAD: At their next monthly meeting, each City of Lebanon board/committee will be asked to assign a member or a subcommittee member to be their Master Plan lead for their assigned Chapter and to review their respective Chapter Outcomes. This will be known as “ChaMP.” A review of what would be expected from “ChaMP” members was explained.
- Training.
- Prioritizing.
- Reporting.
- Reviewing.
- Engaging.
- Updating.
- Schedule of ChaMP meetings.

After some discussion regarding who should represent the Planning Board as a ChaMP member, the following action took place:

Chair Davio agreed to be the ChaMP member for the Planning Board, with Vice Chair Garland as an Alternate member.

D. DISCUSSION AND ADOPTION OF UPDATED RULES OF PROCEDURE

On January 9, 2019, the Board was emailed a copy of the Updated Rules of Procedure for the Planning Board. Mr. Brooks noted that he was alerted by the City Clerk that the Planning Board’s Rules of Procedure did not match any of the other boards/committees in the City and did not match Robert’s Rules of Order. He reviewed the proposed redline edits with the Board and clarified their questions regarding the changes made.

Mr. Matthew Cole MOVED to accept the Updated Rules of Procedure as amended. Seconded by Vice Chair Garland.

**The vote on the MOTION passed unanimously (8-0).*

Chair Davio explained how Waivers were addressed in the past. He would like a clear delineation of the two types of Waivers used by Planning Board. Mr. Brooks encouraged flexibility in how to address Waivers after the Public Hearing portion of the meeting and explained his reasoning.

5. COMMITTEE REPORTS:

- Planning Board Subcommittees:
 - Planning Board Capital Improvement Program (Vacant/S. Welsch/ B. Garland/K. Davio)

Chair Davio MOVED that Mr. Hall be accepted as the 4th members of Planning Board Capital Improvement Program.

Seconded by Vice Chair Garland.

**The vote on the MOTION was unanimous (7-0). Mr. Hall abstained from the vote.*

- City Council Subcommittee: None
 - Class VI Roads Advisory Committee (J. Monroe) - No report.
 - Lebanon Energy Advisory Committee (K. Davio) - No report.

- City Council Representative (K. Zook/ J. Winny) - No report.
- Heritage Commission (G. Schwarz) - No report.
- Pedestrian & Bicyclist Advisory Committee (**VACANT**) - No report.
- Upper Valley Lake Sunapee Regional Planning Commission (**VACANT**)-No report.
- UV Sub-Committee of the Connecticut River Joint Commissions (B. Garland) - No report.
- Upper Valley Transportation Management Association (S. Welsch)

Ms. Welsch informed the Board about the Advance Transit Development 5-year Plan, which is to add more lines and bus shelters. She is happy to send the minutes to the Board. She suggested that the Planning Board may want to send a member to Advance Transit meetings as their plans would have an impact on housing and development in the Lebanon area. She noted that Ms. Rebecca Owens represents the City on the TMP. Chair Davio advised the Board that receiving minutes from TMP would be fine, but there should not be any discussions through emails.

- Mascoma River Local Advisory Committee (**K. Romano**)

Ms. Romano reported on how appointments to the Mascoma River Advisory Committee were made, noting this appointment is an official State appointment by the NHDES. She described what tasks this committee was charged with (e.g., drinking water, removal of invasive species and shoreland permits).

- Steering Committee for the Implementation of the Master Plan (B. Garland/G. Schwarz/ K. Davio/J. Monroe - No report.
- Planning Office - Task Status (D. Brooks/ M. Goodwin/T. Corwin/R. Owens) - No report.

6. OTHER BUSINESS:

Mr. Brooks reported on the following:

- An announcement from the City Manager was passed out noting that the NHMA would be hosting a Local Officials workshop on May 8, 9AM to 4PM, at River College here in Lebanon.
- For the Planning Board Work Session in February, when the CIP Project list for 2020-2015 will be presented, he is trying to get the City's attorney to give an update on Court cases and Statutory updates from last year.
- Asked the Board what other topics concerning their regulations would they like to learn about. Feel free to email him with suggestions.
- Asked the Board what more could the planning staff do, and what role do they want them to play. The Board felt their role has been appropriate so far but will email him with suggestions if any is needed.
- Both of the February Planning Board meetings will be held at the Lebanon Middle School. If parking in the front of the building, go in the door and the location will be immediately on your left. If you park in the back, come in the back door, come all the way down the hallway.
- The Board will be discussing the preliminary review for a PURD. This is a nonbinding discussion but will give the Board and an applicant the opportunity to review the essence of the project, since PURD has a different set of regulations. He explained some of the regulations and answered the Boards questions.

Vice Chair Garland requested that the Planning Staff create a spread sheet of all the different applications and where they stand in the review process.

7. OPEN DISCUSSION: NONE

8. ADJOURNMENT

Vice Chair Garland MOVED to adjourn the meeting at 9:30 pm.

Seconded by Matthew Hall.

****The MOTION passed (8-0).***

The meeting was adjourned at 9:30 pm.

Respectfully submitted,

Dona E. Gibson

Recording Secretary