

**PLANNING BOARD MEETING  
TOWN OF LITCHFIELD**

**Held on November 13, 2012**

Minutes accepted 12/18/2012

The Litchfield Planning Board held a meeting in the Town Hall conference room 2 Liberty Way, Litchfield, NH 03052 on Tuesday, November 13, 2012 at 7:00 p.m.

**MEMBERS PRESENT:** Russell Blanchette (Chairman), Bob Curtis (Vice Chair), Thomas Young, Frank Byron, Leon Barry, Michael Caprioglio (alternate), Steve Perry (alternate)

**MEMBERS ABSENT:** Joel Kapelson, Michael Croteau

**ALSO PRESENT:** Joan McKibben (Admin. Assistant), Jen Czysz (NRPC Senior Planner),

**CALL TO ORDER**

Mr. Blanchette called the meeting to order at 7:00 p.m. and joined the Board in the Pledge of Allegiance.

Alternates Steve Perry and Michael Caprioglio were asked to be voting members of the Board

**Multi-Family Housing Ordinance Final Wording for hearing on November 27**

Jen stated that there was some language added recommended by Town Counsel via e-mail. In his e-mail he referenced his e-mail from November 29<sup>th</sup>, 2011. Jen stated at the last meeting they wanted to work on adding a little language relative to water and waste water systems and what would be available. Jen stated that in her draft and questions sent to Town Counsel she specifically asked about requiring connection to a municipal or public water supply versus the approach we came up with at the last meeting. Town Counsel recommended the Board go with what was drafted after the last meeting and also referred back to his comments from last year. Attorney LeFevre was primarily focused on the amount of area that is zoned or allows the multi-family and whether it is reasonable and realistic in terms of availability and feasibility of construction of multi-family. Attorney LeFevre other comment was an editorial on how we define the districts and simply said it would be less confusing if it was worded to simply say “residential and transitional districts north of Leach Brook and residential and transitional district south of Page Road”. Jen stated that when Attorney LeFevre talks about reasonable and realistic, that whatever the Board does has to be reasonable and realistic, there is not a set area of town or a minimum percentage of the Town wherein a multi-family has to be permitted, the only standard you have is reasonable and realistic. Jen stated that reasonable and realistic in terms of the multi-family and affordable or workforce housing arena comes out of the Chester Case from 1991. Just because you have it on the books saying that yes you have multi-family, which is not the standard at which it will be judged, the standard by which it will be judged

is whether it is reasonable and realistic. Jen stated the only time it gets judged is if it gets challenged.

Mr. Kevin Lynch, Code Enforcement/Building Inspector, stated that the reasonable part is the questionable part. Mr. Lynch brought in the zoning map to show the Board that north of Leach Brook, there are only two parcels of land that are vacant and do not have restriction. Mr. Lynch stated that the only available land is in the North end that is reasonable in his opinion. In the south section, you are referring to the transitional zone. There is only one large parcel and there are wetlands. Mr. Lynch stated that as for transitional there is nothing available in this area (along Rt. 3A), that you could make the density work based on the regulations. Mr. Lynch stated that he does not believe it was the character of Rt. 3A to be multi-family. Mr. Lynch stated that on the Southern part of the regulations, he sees no available land that you can actually do it with based on the regulations the Board has written today. Mr. Lynch stated that he went through the lots; unless you change the density of the older persons housing, they can add more units because you have two uses of land. Mr. Lynch showed the Board on the zoning maps what land is available and what is not. He stated there is not a lot of land. Mr. Lynch stated that the land in the North is farm land; the property owner's concern is taxes, because if you zone it, there is going to be a higher value; because you can sell it for something else. There is value to a land use.

Mr. Lynch stated that it looks good on paper, but there is really nothing on the Southside. Mr. Lynch stated that we have a problem with the State owning some of our land which is actually effecting our growth. Kevin stated that there were a lot things that zoning was planning on back in the day; and the State came in and said they were going to do it, and have reneged at least 20 years. Jen stated that you can re-zone their land. Jen stated that from the state process; anyone can approach a state agency and state that they are interested in purchasing this piece of land and that agency then has the ability to say yes I have a use for it in the future; therefore my answer to you is no, we are not willing to release that interest in that piece of land; or they can say, they have no intentions of using that piece of property at any point and they can then choose to sell it, in which case a private developer could pick up that piece of land. Regardless of who owns the land, you can zone it as you see fit for your future land use. Mr. Byron stated that the only thing you can do in the Southern end is to add into the commercial district that is down there.

Jen stated to help the Board to have a little more information about this conversation, she pulled what they have right now for survey responses and it is posted. One of the questions was where would you put multi-family if it were allowed in Town. The more interesting question was should the Town allow multi-family to meet State Statute and that question is failing overwhelmingly.

Jen stated that in terms of the survey (57 came in so far), we can make modifications and send it to the hearing or send it to the hearing as is and at the hearing can discuss and modify as needed.

Jen stated that the things we need to answer right now are: keep it as is or make a change. If we make a change, what change do you want to make. Mr. Byron stated that there are a couple of things the Board should keep in mind and one of the things are if you are going to build multi-family, you are going to need a sprinkler system and a sewer system and there is only a couple of locations where you can pass both of those and one of those locations are in the Southern part on Rt. 3A just over the line in Hudson. Mr. Byron stated that he heard that

Hudson is planning on running sewer through Litchfield up 102 to pick up their property on the other side of the Litchfield Town line. Mr. Byron stated that the only other location is to the North which is the spur that would come from Manchester down the river.

Mr. Byron asked what happens when the Town is completely built out, if you end up in a situation where you cannot have anything on a lot and deem it to be available. Jen stated that when you reach a point that all of your parcels are nearly built, you have to go back and reassess your zoning and say if there were to be changes to the way the parcels are currently used today, how would we like to see them change with the understanding that development or growth never comes to a complete halt in a community just because your built. You can redevelop in the future.

Jen stated that the rationale that the Board had, that the Northern most part of Town and the Southernmost part of Town being the two primary commuter areas; is a good rationale for why you selected those areas, it makes complete sense when it comes down to multi-family, and it also when you're thinking about land use patterns and what it is adjacent to in terms of your neighboring communities, you're going to have your denser development to the north and south and in terms of keeping things in context of the surroundings it makes sense, whether it is going to split the vote; you do not know until you get there.

Jen stated that we are leaving for the district boundaries, Part A as residential and transitional districts, North of Leach Brook. Jen asked if the Board was amending Part B to say residential, transitional and highway commercial districts (Rt. 102), south of Page Road.

**Motion:** *by Mr. Young to include in Part B, the Highway commercial area.*

**Second:** by Mr. Barry

**Vote:** 6-0-0

Jen stated that the next question is, does the rest of the ordinance look good to go. The Board agreed that it did.

**Motion:** *by Mr. Byron that the Litchfield Planning Board brings to Hearing on November 27<sup>th</sup> at 7:00 pm the Draft Ordinance, Multi-family Overlay District.*

**Second:** by Mr. Young

**Vote:** 6-0-0

### **Appendix G amendments to the existing Subdivision Checklist and new Site Plan Review Checklist**

Jen stated that since the Board has seen this last is that the 2 checklists were merged into one document; the Subdivision checklist and the Site Plan checklist and the title of Appendix G has been slightly modified. Jen went over some of the changes. The preface or explanatory information was added to the beginning of the checklist. Page 4 and 5 are entirely new which is a new site plan checklist, which never existed before. Jen stated that if this looked good to the Board they could vote to send it forward to the Hearing on the 27<sup>th</sup>. Jen stated that the difference here was that this is an amendment to your subdivision and site plan regulations and does not have to go to Town meeting; you hold your own hearing and you

can vote after the hearing whether to make the change to your regulations or not.

**Motion:** *by Mr. Barry that Appendix G, in the Subdivision and Site Plan review regulations checklist be brought to public hearing on November 27<sup>th</sup>.*

**Second:** by Mr. Young

**Vote:** 6-0-0

**Subdivision Regulations: Amendments to Section 320.00 -320.10 “Completed Application” and Section 530.00 “Subdivision Information. Site Plan Regulations : Amendments to Section 140 Submission Procedures**

Jen stated that there is only one changed on what was talked about at the last meeting and based on Town Counsel comments in which he pointed out that we can't actually require an applicant to submit their variance with the application because we can't condition an applications acceptance on receipt of other permits or approvals from other Governmental entities, including the Zoning Board; it can be a condition of approval that they will get their variance, but it cannot be a prerequisite for determining whether or not to accept the application. Jen stated that you can accept and review the application and give them a conditional approval, but they do not get their final approval until they have met those conditions. The particular change for the subdivision regulations in section 320.00, in the line towards the end where it says completed application: include all of the information required in section 500, 700 Subdivision Review Checklist, request for waivers was removed. The similar language which was in the Site Plan in 140.2(b) was also revised to say request for waivers and any additional studies required by the Board.

Jen stated that this does not have to go to Town meeting because it is just Subdivision, Site Plan Regulations; this can be adopted by the Board.

**Motion:** *by Mr. Barry send Amended section 320 and 320.10 a completed application to Public hearing on November 27<sup>th</sup>.*

**Second:** by Young

**Motion:** 6-0-0

**Motion:** *by Mr. Barry to Amend section 140 Submission Procedures of the Town of Litchfield Site Plan Regulation to Public hearing on November 27<sup>th</sup>.*

**Second:** by Young

**Motion:** 6-0-0

**Motion:** *by Mr. Barry to Amend section 530.00 Submission Information to the Town of Litchfield Site Plan Regulation to Public hearing on November 27<sup>th</sup>.*

**Second:** by Young

**Motion:** 6-0-0

**Appendix A Section 5 Performance Guaranty/Bonding Requirements & Procedures Subdivision Regulations, Section 730.00 Streets and Roads**

Jen stated that this has not changed since last seen by the Board. Town Counsel had no comments or suggestions for 730. For Appendix A, No other comments or suggestions

on what was drafted, but he did respond specifically to the question the Board had at the last meeting; could you set a deadline in which you expected the developer to complete any of the improvements; Counsel said you could not make that stipulation or condition as part of the approval of the Plat, but as part of your bond requirements, he pulled forward RSA 674.36 III and states the Board may condition approval upon the extent to which the manner of the street shall be grade and improved. However, while subparagraph (a) states that while the plan may be conditionally improved before the improvements have been made; any such condition shall not be entered on the Plat. Subparagraph (b) of that same section, addresses your specific concerns with regards to the performance bonding and says "The Planning Board shall, within the limitations provided in this subparagraph have the discretion to prescribe the type and amount of security and specify a period for completion of the improvements and utilities to be expressed in the Bond or other security." Jen stated that No you can't make it a condition of the Plat, but Yes you can put that time frame that you're looking for within the Bond itself.

Mr. Byron had a question about putting the time on there, and he believes the only thing you can put on the bond would be that the Town will pull the bond (for example three years) so the Town will pull the bond in three years if this work is not completed. Jen stated yes and that means the Town will have to finish the road. Mr. Barry stated that you would have to make enough money in the bond so that the bond covers the road to be done. Jen stated that is the option and Counsel said he would recommend literally quoting the statute in Appendix A, he also did not say, you should identify and set a specific time frame within your regulations, that it would be something that would be specific to the individual application. Jen stated that what she read was from Attorney Lefevre's notes that he sent back. Based upon his notes, Jen made one change to Appendix A, which is in 5.3, and added a new part B; that says "The specified period for completion of the improvements shall be recommended by Litchfield's designated representative (e.g. Consulting Engineer) upon Planning Board and applicant agreement on the final plan layout. The specified period for completion of the improvements is to be expressed in the bond or other security in order to secure to the Town the actual construction and installation of such improvements". It is taking some of the language from A and the language from the Statute and adding a new section.

Mr. Perry had a question about the maintenance bond area where it says the designated representative says "If a repair or unusual maintenance is needed or additional improvements are required, then they must be performed by the applicant or such cause unnecessarily be drawn against the Guaranty. What happens if the Town has to draw against the Guaranty, do they have to refund it? Jen stated that this was a good question and will look into it. Mr. Byron asked what the value amount is for the maintenance bond for the road going to be set at. Mr. Perry stated that it is whatever the engineer decides. Mr. Barry asked if the Board has any input to the person determining the cost of the amount of the Bond, do we have an opportunity to discuss that with them on what we think before he sets the amount of the bond. Mr. Perry stated that we used to do that. Joan stated that insurance bonds are hard to collect on. Mr. Barry asked if bonds can be set like if a bond is good for three years and then another bond be set for another three years for a lesser amount. Mr. Byron stated it supplies go up, and then the value of the bond should be adjusted. Mr. Barry asked if there was a checklist that would determine what would require a bond to go up. Mr. Perry stated that the problem with that is that you have to pay the engineer every

time he does that. Mr. Byron stated that it should come out of his escrow. Jen stated that the applicant is responsible for the engineer's cost. Mr. Barry asked if this becomes part of Appendix A or is something that is for discussion. Jen stated that under 5.6 (a) you have an existing clause that states; the calculated bond dollar value shall not change for the entire two year period, so the value of bond is put into effect for a two year period. Once it has been approved and set it can't change for that two year period. When that bond is re-evaluated two years later that is when if there is a cost increase it would be applied.

Jen stated that this was not one of the items that were identified for the hearing at the next meeting, but we did say if we felt like we were there then we might add it to the hearing, if we don't feel we are there, we don't add it to the hearing and keep working on it.

Jen asked the Board if there were any comments, thoughts, suggestions, and modifications to any of the pieces that have been changed thus far.

Jen stated that under 5.4 (a) where it says residential, housing for older persons, she would add in multi-family and housing for older persons; because you so still have housing for older persons that may or might not have road bonds still floating.

Mr. Perry had a question about 5.6 (b) road maintenance bonds; post construction performance maintenance bond shall be \$15 per linear foot of roadway; why are we putting a dollar value on that? Jen stated that was a good point. Mr. Perry stated that they could outdate themselves quick if you actually put numbers in. Jen stated that it says the number should be reviewed by the Board and consulting engineer on a bi-annual basis. After further discussion the Board decided they should further review Appendix A.

730 – Streets and Roads. Jen stated there was no change, it only makes modifications to 730.05 and this is in keeping consistent with the time frame changes for base coat and wearing coat application. Jen stated that if the Board has no issue with this, they should hold on to it so that when the Board is ready to move Appendix A forward to a hearing that you do the two together.

#### **Other Business – Fees for new subdivision (Map 2 Lot 14)**

Joan stated that they will be getting a subdivision of one lot into five lots. There is no frontage in Litchfield, their entire frontage is in Hudson and all the houses will be in Hudson. Joan stated her question is on fees. Normally the fees would be \$5,000 on escrow. Jen and Lou will review this and will coordinate with the Town of Hudson. Joan wanted to know if they should charge the whole fee or not. Mr. Perry stated in his opinion they should charge the whole fee. Mr. Barry asked if they normally charge a flat fee per lot or do you charge a fee per subdivision. Joan stated there is a flat fee for the subdivision and per lot is added in and then the escrow is a flat fee. Mr. Perry checked the fee schedule and the escrow amount should be \$10,000 for three or more lots. Joan will relay that to the applicants engineer.

#### **Approve Minutes of October 2, 2012 and October 16, 2012**

**Motion:** by Mr. Barry to approve minutes of October 2 as amended

**Second:** by Mr. Young

**Vote:** 6-0-0

**Motion:** *by Mr. Perry to approve minutes of October 16*

**Second:** by Mr. Young

**Vote:** 5-1-0 (Mr. Barry abstained)

Mr. Byron stated that he put together an analysis of Litchfield's Fair Share Housing for the Town. It was sent to Town Counsel and Town Counsel said it looks like it make sense and suggest that it is appropriate. The conclusion of the document is that we meet our Fair Share for Workforce housing.

Joan stated that she dropped off 500 survey flyers to GMS and LMS for the kids to take home.

**Motion:** *by Mr. Perry to adjourn*

**Second:** by Mr. Young

**Vote:** 6-0-0

There being no further business before the Board, the meeting adjourned at 9:30 p.m.

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Russell Blanchette, Chairman

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Bob Curtis, Vice Chairman

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Frank Byron, Selectman

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Michael Croteau

\_\_\_\_\_  
Thomas R. Young

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Leon Barry

**Minutes taken by:** *Donna Baril*