

**TOWN OF LITCHFIELD**

**Litchfield Planning Board**

**October 5, 2010**

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**Litchfield Planning Board  
October 5, 2010  
Minutes Approved 11/19/10**

**Members present:**

- Edward Almeida, Chairman
- Leon Barry
- Frank Byron, Selectmen’s Representative
- Barry Bean
- Joel Kapelson, Alternate

**Members not present:**

- Jason Brennen, Clerk
- Carlos Fuertes
- John Miller, Alternate

**Also present:**

- Joan McKibben, Administrative Assistant
- Steve Wagner, Nashua Regional Planning Commission, Sr. Planner, Circuit Rider

**AGENDA**

- 1. Planning Board Applicant**
- 2. Impact Fee Schedule Review**
- 3. Zoning and Regulation Changes for 2011**

**Any Other Business:**

- Minutes:** September 7, 2010
- Correspondence**

Chairman Almeida called the meeting to order at 7:02 p.m. Joel Kapelson was appointed as a voting member.

**1. APPLICANT INTERVIEW**

Mr. Robert Curtis came forward to discuss his desire to serve as a Planning Board member. He is a commercial real estate appraiser. Prior to being an appraiser, he had thirty (30) years of management experience for AT&T. He has resided in Litchfield a little over a year. Mr. Byron asked if his involvement in commercial real estate would

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1 present any conflict of interest. To this, Mr. Curtis replied that he does not believe there  
2 would be any conflict because all he does is provide a value estimate for the real estate.  
3 He does not get involved in the sale of property. Mr. Curtis said he would be able to  
4 attend the meetings. Talk ensued as to what the Planning Board functions entail and  
5 training available to Mr. Curtis. Mr. Curtis left the meeting.

6  
7 The Board discussed the appointment of Mr. Curtis as a member. This led to discussions  
8 as pointed out by Mr. Almeida that if members cannot attend the meetings regularly, then  
9 they should resign.

10  
11 Mr. Barry **MOTIONED** to accept Robert J. Curtis, Jr. as a full member of the Planning  
12 Board. Mr. Bean seconded. Motion carried 5-0-0. Mr. Almeida will write a letter to the  
13 Selectmen notifying them of the appointment. Mr. Curtis will be notified to attend the  
14 October 18, 2010, Selectmen's meeting for an interview. The Board needs to figure out  
15 his term expiration date.

### 16 17 **2. IMPACT FEE REVIEW**

18  
19 **Joint Meeting** - Selectman Frank Byron said there is a meeting plan for November 1,  
20 2010, tentatively, because there has been a lot of misunderstanding as to the use of  
21 impact fees. The meeting is scheduled at 6:30 p.m. at Town Hall with the Selectmen,  
22 School Board, Budget Committee, Town Counsel, et al. So, a meeting will be held  
23 tentatively on November 1, 2010, at 6:30 p.m. at Town Hall with School Board, Budget  
24 Committee, Town Counsel, et al, to discuss use of impact fees. Mr. Bruce Mayberry will  
25 be asked to attend.

26  
27 **Impact Fee Assessment** - Mr. Almeida has the draft report of the scope of work that  
28 covered Mr. Mayberry's contract. Mr. Almeida said that he would follow-up on getting  
29 the final version of the report including the other impact fee assessments left out of the  
30 report. The Board needs to hold a public hearing on the fee schedule, Table 1 and Table  
31 2, and present it to the Selectmen for approval. Normally, this is done in August; so, the  
32 Board is behind schedule in the approval process.

33  
34 Mr. Byron explained over the years there have been multiple Capital Improvements Plan  
35 (CIP), say three and in each of those CIP's there have been different projects acceptable  
36 for collection of impact fees. The question is what, out of those three (3) CIP's, are the  
37 suitable projects for funding? Or are you going to use the last CIP as the means these are  
38 the projects that can be funded. This needs to be clarified because that seems to be the big  
39 issue. Talk ensued. Mr. Wagner pointed out just because certain items are in the CIP does  
40 not mean they are eligible for impact fees. Mr. Byron: Exactly. I do not think there is an  
41 understanding of that on the part of the people. In other words, what should be done  
42 somewhere extracted into a document it should say these are the projects that are  
43 fundable for impact fee expenditures.

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2 Mr. Wagner: I think it is more complex than that. For example, if you have a \$100,000  
3 project and only 30% is attributable to future growth, then only \$30,000 can be expended  
4 from impact fees.

5

6 Mr. Barry asked if there could be some kind of language written to say the second CIP  
7 overrides the first and the third overrides the second. To this, Mr. Byron said Attorney  
8 Buckley did not recommend doing that. Mr. Almeida: I recall what he said is because at  
9 the time you were collecting impact fees for a project that was valid at the time and then  
10 you are sort of invalidating that project. Wipe it off and say we have these new projects  
11 so if you go back in time and say we didn't have what we have today but we did back  
12 then and you are collecting impact fees, how do you justify that.

13

14 It was pointed out that there are school impact fees due to expire in December. The  
15 School Board has requested using \$340,000 of high school impact fees to pay off the  
16 bond. The bond payment is a valid use of impact fees. The payment is in December 2011.  
17 It was asked if the expiration date of the impact fees could be extended. Mr. Byron said  
18 that the attorney for the school said that the fees could be encumbered. They can be  
19 encumbered and the Selectmen voted to hold those because it was their understanding the  
20 school was going to show that as revenue and this would drop the tax rate to make up for  
21 the 2 million dollars the school is losing in State aid. Mr. Byron further stated after  
22 digging into it, he discovered that is not what is happening.

23

24 Mr. Wagner indicated as to the methodology it has never been followed since Dave  
25 **Gilmour**. Mr. Byron: That is exactly what Buckley (Town Counsel) was trying to point  
26 out when he appeared in front of the Planning Board...to come up with a methodology  
27 you are obligated to do that. The methodology he is referring to is the methodology in the  
28 2000 document put together by **Dave Gilmour** and has been in existence since then. It is  
29 up to the Planning Board to say how the fees are going to be collected, how they are  
30 going to be assigned to the project, what projects are eligible and the methodology for  
31 assigning the fees.

32

33 Mr. Barry mentioned adding incinerator fees as another category. Mr. Wagner: We would  
34 have to go through the analysis like Bruce Mayberry did for the fire and police. If it  
35 turned out that there was significant growth at the transfer recycling station that is going  
36 to be needed to handle future growth and you can reasonably see expending funds in 6  
37 years, yes, you could look at developing an impact fee for that.

38

39 Mr. Kapelson asked about redirecting the fees. Mr. Byron replied that he did not think  
40 under the law you can do that. Mr. Wagner: The statutes are very clear that they (impact  
41 fees) have to be expended for the use that they were collected for and only the  
42 portion that the development or project...

43

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1 Mr. Kapelson: Within that category specifically...

2 Mr. Wagner: This is where there is going to be trouble. I do not think NRPC wants to be  
3 sticking their foot in coming up with a detailed list. I think you are going to need Town  
4 Counsel to come to the Planning Board because the way I see the school impact fees, it is  
5 for construction and furnishings of the buildings. At one point, they wanted to put in  
6 bleachers for sports, etc.

7

8 Mr. Byron said the school wants to use impact fees for kindergarten but kindergarten is  
9 mandated by the State. Impact fees could be used if there is a need to increase the size of  
10 kindergarten for new development coming in and it is only a small portion of  
11 what was collected for the elementary school, which would be a square footage type  
12 thing and say okay we have 300 square feet of space for kindergarten and 1,000 square  
13 feet...

14

15 It was also pointed out that the school wants to pay for portable classrooms at LMS and  
16 use them for kindergarten and pay the cost of the portables with impact fees.

17

18 Mr. Wagner: The **Gilmour** memo from 2000 has all of these schedules and pretty much  
19 lists everything as to what the impact fees were intended for. Even Bruce Mayberry's  
20 general review of the overall impact fees, beside the public safety, has a table on the first  
21 page...it list the municipal building, fire building, police building, library expansion and  
22 then there is a list of paid things for Recreation Commission. I think there is some  
23 apparatus like the Quint that has been on the docket for a long time. That is kind of the  
24 limit as to what the impact fees are supposed to be assessed for.

25

26 Talk ensued. Mr. Wagner: If I could say one comment about past impact fees, it is  
27 important for **the Selectmen and Budget Committee to see the history of a** project that is  
28 maybe carried through three CIP's...for example a front-end loader back in the 2001 CIP.  
29 It may have been listed as **Research**; it needs research to get cost on it and it is just a  
30 place mark in that CIP. Then maybe the next CIP it gets elevated to **Necessary and it has**  
31 **a firm cost, and then in the most recent CIP, it says it is Urgent...**so, I can see where you  
32 **look back on the history and something that has been around for a long time,** if it is  
33 eligible for impact fees, that should help move it up the priority list. Department Heads  
34 need to make sure when doing their budget cycle and come up with their capital  
35 programs that they have access to old tables from the previous ones **(CIPs)** so they do not  
36 leave something out because if what Frank is saying, if you make a determination that  
37 only the current one is valid, they may have a project that should have come through that  
38 is now in the wasteland.

39

40 Mr. Byron indicated that if the project is not valid, then it should be dropped from the  
41 CIP.

42

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1 Mr. Kapelson: What happens to those funds? That is why I was asking about the  
2 redirection.

3  
4 Mr. Byron: That may mean that we have to give funds back on an apportion basis and  
5 that comes back to the methodology for apportioning the funds and that has to be set by  
6 the Planning Board.

7  
8 Mr. Barry asked how the money gets into the CIP. Mr. Byron: What happens is the  
9 Planning Board goes to departments asking for capital needs for the next 6 years. The  
10 information is collected and it says, for example, the highway needs a new front-end  
11 loader. What happens is the Planning Board evaluates if it is a critical need with the  
12 recommendation of the department head and then the Planning Board list it as an urgent  
13 need...it gets listed in the CIP. Then the Board of Selectmen will understand, yes, we are  
14 going to fund that going forward the next 6 years to purchase a front-end loader. We  
15 collect impact fees because of that and then a certain point in time the Town will bring  
16 forward a warrant article, or vote to appropriate money for a front-end loader, and only  
17 use impact fees to pay for some of it and then straight appropriations to pay for the rest.  
18 Where this is broken down is the voters have said no for an elementary school and we  
19 have been collecting impact fees...and it is sitting there.

20  
21 Mr. Barry: How does the money get into that budget?

22  
23 It was said that impact fees are collected when a new house is constructed but right now  
24 there is not a lot of money coming in to offset the cost of the capital projects because  
25 there is not a lot of building going on.

26  
27 *Cost Escalator* - Mr. Wagner said the cost escalator changes every year in August. He  
28 went on to explain how he derived the escalator cost (factor). Mr. Wagner: The number is  
29 in the ordinance. Take the index number and figure out the difference from the 2000  
30 index number to the 2009 index number and that is the percentage of growth and you  
31 come up with a factor. That factor is applied to the impact fees and that is something, that  
32 is adjusted every year. The exception is Campbell High School because it is already built  
33 so there is no inflation; so, you are just paying for what you paid to build so that has a  
34 factor of 1.0.

35  
36 Talk went on regarding continuing the collection of high school and elementary school  
37 impact fees. Mr. Kapelson: I question, certain things should get off, or not. I think it is all  
38 in interpretation of what is the impact to the school.

39  
40 Mr. Byron: If the Town continues to grow, will Campbell High School increase in size?

41  
42 Mr. Wagner: They would come out with an impact fee for an addition, I would assume.

43

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1 Mr. Byron: What is being collected now is not for an addition. What is being collected  
2 today is for the school as you see it...that school is complete. If there is a need for an  
3 addition, like Steve said, it is a separate issue and should generate a separate impact fee.

4 Mr. Kapelson: The burden on new people coming in is still proportionate to the usage  
5 and you want to let that go away?

6

7 Mr. Wagner: Let's say the school cost 10 million dollars and 30% was attributable to  
8 future growth...\$3,000,000 could put towards the 10 million.

9

10 Mr. Kapelson: But never at a 100% of that number.

11

12 Mr. Wagner: I guess that is my question. You have to see what the school's accounting is  
13 because, again, to me that 30% should have gone to paying the principal on the bond  
14 instead of storage sheds, new furniture, computers, etc.

15

16 Mr. Almeida asked how to go about eliminating impact fees. Mr. Wagner: We get the  
17 numbers from Jason (Hoch) and Frank (Selectman) that justifies the fact that we collected  
18 all that was allowed to collect and produce a record that points out that fact and just take  
19 it off.

20

21 Talk ensued. Mr. Wagner: Steve Buckley is a good resource. He has litigated impact fee  
22 cases and he is involved in his community in Bow regarding impact fees.

23

24 *Impact Fee Schedule* - Regarding the memo dated October 5, 2010. Mr. Wagner: This is  
25 a draft of what would be required to review Gilmore's report and make a determination  
26 that, yes, this is an eligible item. My understanding is Bruce Mayberry has a problem  
27 with replacement equipment.

28

29 Mr. Byron: I think replacement equipment, I would agree with Mayberry, you should not  
30 collecting impact fees for replacement equipment. In other words, you have one fire truck  
31 that goes belly up and you need a new fire truck, there is no increase in service but if you  
32 have a fire truck that is overkill for the number of houses you have to support, then the  
33 future houses should be paying part of that and I do not know how you show that. The  
34 CIP does not indicate whether the requested capital projects are impact fee eligible.

35

36 Mr. Byron: To me, the methodology has to come all the way back to take and look at the  
37 cost of the equipment. How many new houses are going to be built that you can assign  
38 some amount of the purchase of that equipment to. In other words, is the capacity of that  
39 equipment extended to those houses and if it does, they should be paying their fair share  
40 and that would determine how much the impact fee should be on that piece of equipment.

41

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1 Mr. Kapelson: Is this where some language as far as expiration so that certain things do  
2 not expire. It is one thing to take them off, another thing to let them expire. Where would  
3 that go? Where is it? Maybe it is already there.

4  
5 Mr. Wagner: You have to go back to the basis of the fee schedule. Again using 30% -  
6 say the fire station has been built and we collected the last dollar of that 30%, it would  
7 expire. Any new additions would have to fall under some new impact fee.

8  
9 The Board needs to hold a hearing on Table 1 & 2 Impact Fee Schedule with Cost  
10 Escalator Factor 2010-2011.

11  
12 **Meeting Date Change** - It was agreed there would be no meeting on November 2, 2010,  
13 due to elections. There will be a meeting on November 9, 2010.

14  
15 **Impact Fee Schedule Hearing** - Mr. Almeida **MOTIONED** to move the impact fee  
16 schedule as proposed to public hearing on November 9, 2010, at 7:00 p.m. at Litchfield  
17 Town Hall. Mr. Bean seconded. Motion carried 5-0-0.

### 18 19 3. ZONING AND SUBDIVISION CHANGES

20  
21 **Section 850.00 Post Approval Procedures** - Regulation states that if conditions are not  
22 met by the next regular meeting, that the conditional approval is null and void. It was  
23 suggested allowing 30-90 days to meet conditions. Mr. Byron suggested making it 90  
24 days and state that alternatively the applicant can file, in writing, with the Planning Board  
25 dates and times certain for consideration. Mr. Wagner said that the way other towns have  
26 been doing it is say you have 60 or 90 days that you report back with the status every  
27 month. Wilton keeps the plan on the agenda until the conditions are met as a reminder.

28  
29 The following to be changed under Conditions of Approval: *If the conditions are not met,*  
30 *the condition of approval would be null and void after 90 days unless an extension is*  
31 *granted by the Planning Board.* A public hearing will be held on the above noted change  
32 to subdivision regulations

33  
34 **Section 850.1.1 Recording** - The Board discussed a subdivision plan that had been  
35 signed but all the conditions were not met. One option to avoid it happening is to not  
36 approve the plan until all the information has been submitted. It was suggested reviewing  
37 a checklist before signing the plan making sure all the conditions are met. Mr. Wagner  
38 said that the Notice of Decision could be utilized, which would have the listed conditions,  
39 and also the conditions are noted in the minutes. Also, once the plan gets final approval  
40 but is not filed in the Hillsborough Registry of Deeds within 30 days, it becomes null and  
41 void. So, applicant would have 90 days to meet the conditions and once the conditions  
42 are met, if the plan is not filed in the Registry of Deeds within 30 days, it is void. Mr.  
43 Wagner said that there might be a statute to back this up; he will research this. The

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1 burden is on the Town because the Town is the one that records the plan. (674:37 -  
2 Recording)

3  
4 **850.2 Condition of Approval** - *All terms of a conditional approval shall be met as*  
5 *determined by the Planning Board in its affirmative vote on the motion for conditional*  
6 *approval prior to recording of the plan at the HCRD.* Mr. Almeida suggested adding: If  
7 conditions have not been met, the condition of approval is null and void. Mr. Wagner  
8 added that one standard note that should be on all plans is *you are bound by the*  
9 *regulations, statutes and ordinances regardless whether we catch something or not.*

10  
11 The other thing, Mrs. McKibben pointed out the Board needs to state when it wants the  
12 bond posted. The regulation states *all bonds or other requirements should be met prior to*  
13 *recording plans.* This will be discussed at a later date.

### 14 15 **Zoning Regulations**

16  
17 **Fences** - The Code Enforcement Officer suggested changing regulations as pertains to  
18 fences. Fences are defined as a structure and as such are supposed to meet the setbacks.  
19 This was discussed. Section 502.03 Setbacks add exempt fences from setback  
20 requirement. Change to read: *All structures **with the exception of fences** must be set*  
21 *back a minimum of fifty (50) feet from the front line and public rights of way, and twenty*  
22 *(20) feet from side and rear lot lines.*

23  
24 Also, change second sentence to read: *For Albuquerque Avenue, all buildings and*  
25 *structures **with the exception of fences** shall be setback a minimum of seventy-five (75)*  
26 *feet from the edge of right-of-way.*

27  
28 **Accessory Dwelling Units** - The Code Enforcement Officer recommends adding  
29 accessory dwelling units. This was discussed.

30  
31 **Multi-Family** - Mr. Wagner: Looking at a district for five units or multi-family units, if  
32 Litchfield was ever to be put in the position where “builders remedy” was put in effect,  
33 we have no district for 5 plus multi-family units. So, we should be looking at designating  
34 that northern portion where there could be a potential for hooking up sewage as a district  
35 for multi-family. The only thing we are riding on is the value of properties have gone  
36 down so we probably meet the fair share requirement as far as falling under that \$260,000  
37 (based on HUD numbers) threshold rule. We have no provision for affordability clauses  
38 and no provision for multi-family units. You might want some advice from Town  
39 Counsel on this as to how to proceed.

### 40 41 **Correspondence**

42  
43 The Board is in receipt of a letter from Maynard & Paquette regarding the Rolling Acres.



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1 As to the bond, Mrs. McKibben said that the \$75,000 bond was a restoration bond after  
2 the fact. The road bond would have been more than that. Mr. Barry off the Board. It was  
3 noted that the Planning Board had voted that a restoration bond be posted. Mrs.  
4 McKibben said that Mr. Manoukian started logging is how the restoration bond came into  
5 play, but he had not stumped it out. Mr. Wagner: Typically, even if you clear the right of  
6 way on a parcel of land for a road, you are entitled to take trees but you also pay a timber  
7 tax if you go over a certain amount of trees.

8  
9 The letter will be forwarded to Town Counsel. Mr. Barry returned to the Board.

10  
11 **NRPC Meeting** - Mr. Leon Barry (NRPC Commissioner) attended the NRPC meeting  
12 but there were not enough members in attendance for a quorum to vote on the budget. He  
13 provided a copy of the Committee’s overview of programs they completed in the past  
14 year and their direction for next year. Also, Mr. Barry said there is a concern with quality  
15 of air in South Nashua. Mr. Barry further stated that Mr. Joel Kapelson was confirmed as  
16 an alternate to the Committee as Jason Brennen had stepped down.

17  
18 **Any Other Business**

19  
20 **Minutes** - Mr. Bean **MOTIONED** to accept the September 7, 2010 minutes as amended.  
21 Mr. Barry seconded. Motion carried 3-0-2.

22  
23 There being no further business, Mr. Barry **MOTIONED** to adjourn the meeting. It was  
24 seconded. Motion carried 5-0-0. The meeting adjourned at 10:05 p.m.

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28 \_\_\_\_\_  
Edward Almeida, Chairman

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Leon Barry

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Frank Byron, Selectman

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34 \_\_\_\_\_  
Barry Bean

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Joel Kapelson, Alternate

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42 Lorraine Dogopoulos  
43 Recording Secretary